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Banking, Commerce and Insurance Committee  
February 03, 2014

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[LB749 LB751 LB810 LB1010]

The Committee on Banking, Commerce and Insurance met at 1:30 p.m. on Monday, February 3, 2014, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB749, LB751, LB810, and LB1010. Senators present: Mike Gloor, Chairperson; Mark Christensen, Vice Chairperson; Kathy Campbell; Tom Carlson; Tommy Garrett; Sara Howard; Pete Pirsch; and Paul Schumacher. Senators absent: None.

SENATOR GLOOR: Good afternoon. I'm Senator Mike Gloor, 35th District which is basically Grand Island, and I'm Chair of the Banking, Commerce and Insurance Committee. We'll take bills today in the order that they were listed in the agenda outside the door. We have a few rules we operate under. We have a board over there that kind of walks you through the rules, but let me reiterate them. Please either turn off or put on silence or vibrate your cell phones. We have reserved chairs up front. So if you're going to offer some testimony, you don't want to sit in the front row, there's no penalty, unlike schools or church, but it does help us, if you move more toward the front, help us keep things moving along. The order of testimony is the introducer, proponents, opponents, those in a neutral capacity, and then closing. We would ask when you provide testimony, be sure and give us and spell out your name. If you plan to testify, fill out a testifier's sheet. There are some in the back of the room, and be sure to hand that in to the clerk. This is...there's a new item for us. And that is, there have been problems with the transcribers being able to hear the testimony that's being given and hearing senators and their comments and questions. So we'd ask everybody not necessarily to eat the microphone, but please be sure and speak to the microphone so that we get all of the important and precious words that I'm sure will be spoken today. Please be concise. We don't use the light system except in rare instances in this committee, but try, if you're able, to keep your comments to about five minutes. If you'll not be giving testimony today, but you'd like your voice heard or at least your opinions heard, you can certainly sign in and give us some written comments. Any written material, there need to be ten copies so we can make sure to get things distributed. Give those to the pages or the clerk and we'll get those handed out. To my immediate right is committee counsel, Bill Marienau. And at the end of the table on my left is the committee clerk, Jan Foster. And I would ask committee members to introduce themselves starting with Senator Garrett.

SENATOR GARRETT: Senator Garrett from District 3, Bellevue.

SENATOR SCHUMACHER: Paul Schumacher, District 22, that's Platte and parts of Colfax and Stanton County.

SENATOR PIRSCH: Senator Pete Pirsch from Legislative District 4, which is parts of Douglas County and Omaha.

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SENATOR CHRISTENSEN: Senator Mark Christensen, District 44, Imperial.

SENATOR CARLSON: Tom Carlson, District 38, Holdrege.

SENATOR HOWARD: Sara Howard, I represent District 9 in midtown Omaha.

SENATOR GLOOR: And committee clerk or excuse me, the committee pages are Emily Schiltz from Sioux Falls, South Dakota, and Steven Schubert, right here in Lincoln, Nebraska. And they're here to help us and help you, if necessary. And welcome, Senator Campbell, who I know has come from an important meeting. Would you like to introduce yourself?

SENATOR CAMPBELL: Thank you. I'm Kathy Campbell from District 25.

SENATOR GLOOR: And with that, we welcome Senator Harr to lead us off with LB749. Senator Harr, welcome. [LB749]

SENATOR HARR: (Exhibit 1) Thank you, Pastor Gloor. (laughter) My name is Burke Harr, H-A-R-R, and I am Senator from Legislative District 8 located in the true midtown Omaha area of Benson, Dundee, and Keystone, and other neighborhoods. I am here today as a result of LR187 conducted last summer with the great help and assistance of Mr. Marienau, Bill Marienau, your committee attorney. This bill takes the current Nebraska model business act and updates it with the ABA Model Business Act while still keeping certain aspects of the prior, Nebraska specific. It's a very long bill but that is, in essence, what it does. It updates it. I could go through it line by line. It is a 341-page bill. I can go over more, but that is the bill. And I would be willing to entertain any questions you may or may not have. [LB749]

SENATOR GLOOR: Senator Harr, I'd have a question which is why did you decide to take on this bill this year? [LB749]

SENATOR HARR: Good question. Why this year as opposed to any other year? This was last updated...the model business code...act had been around since the 1950s. It was updated in 1984 by the ABA. We, in the Nebraska Legislature, updated it in 1994. And we've been taking bits and pieces of it every year. For instance, there's a Nebraska specific that says board members, when on a merger acquisition, can look at what stakeholders are and not just shareholders, take that into account. And so I thought it was time. And, actually, it was at the recommendation of Mr. Marienau that we look at this and really update it to make it as Nebraska specific as possible. Well, keep the Nebraska specific parts while updating it to make it easier to have business transactions within Nebraska and other states, to be frank. [LB749]

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SENATOR GLOOR: Okay. Any other questions? Senator Schumacher. [LB749]

SENATOR SCHUMACHER: Thank you, Senator Gloor. Senator Harr, has Delaware and Nevada, for example, adopted this particular code? [LB749]

SENATOR HARR: Thirty-three states have adopted it in full. And then you have another eight that have it done partial. I would have to go back and look. I forgot to look at Nevada, but I do know Delaware has. [LB749]

SENATOR SCHUMACHER: So Delaware corporate law is now, essentially, this? [LB749]

SENATOR HARR: It's similar, but not the same. [LB749]

SENATOR SCHUMACHER: Because for a long time, one of the gimmicks that made Delaware a lot of money and I think makes Nevada a lot of money was that they had substantially easier corporate laws, more director-friendly corporate laws than Nebraska or than the majority of the states. [LB749]

SENATOR HARR: Yeah, similar but not the same is what I would say. And what makes it easier is, for instance, what the shareholder rights are, minority rights. Ours...it differs from...again, I'm not familiar with Nevada, but I know it differs from Delaware. [LB749]

SENATOR SCHUMACHER: Thank you, Senator Harr. [LB749]

SENATOR GLOOR: Senator Carlson, you had a question. [LB749]

SENATOR CARLSON: Yes. Thank you, Senator Gloor. Senator Harr, did you write this bill? [LB749]

SENATOR HARR: No, I did not. [LB749]

SENATOR CARLSON: Did you read it? [LB749]

SENATOR HARR: I did, unfortunately. [LB749]

SENATOR CARLSON: Did you read the whole thing? [LB749]

SENATOR HARR: I did, over the summer and then some updates, yes. [LB749]

SENATOR CARLSON: Good for you. [LB749]

SENATOR HARR: Yeah. Thank you, Senator Chambers. [LB749]

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SENATOR GLOOR: Senator Schumacher. [LB749]

SENATOR SCHUMACHER: Thank you, Senator Gloor. Do you remember what you read? [LB749]

SENATOR HARR: You know, some parts better than others; the pertinent parts. And you'll see in front of you there's a handout that has a summary. Again, I did not put this together. But it talks about what changes are in this bill to get it to the model. And back to your previous one, I know for instance, our constitution has certain requirements so we could never have Delaware law. [LB749]

SENATOR SCHUMACHER: The...just one other question that comes up with regard to the...if...since it's a model act, if we start paging through it and find on page 82 there's something we don't like, how free should we feel to tweak it, to change it? Or is that kind of not kosher to do it that way? [LB749]

SENATOR HARR: Well, like I said earlier, we do already vary from the Model Business Act in such ways as taking into account shareholder versus stakeholder so we already do vary. I think it would have to be specific to whatever is on page 82. I think we should be very careful when we do it, but I don't think there's...you know, this is Nebraska. We're a one-house system. We do do things differently here. And there's nothing wrong with that. And this has to conform with our state constitution as well. So I don't have a problem, but I would say go at it carefully. But it would be...have to...it's fact specific to whatever you want to change, is what I would say, but to go about it carefully. [LB749]

SENATOR SCHUMACHER: Thank you. [LB749]

SENATOR GLOOR: Senator Christensen. [LB749]

SENATOR CHRISTENSEN: Thank you, Senator Harr. You said you could go through it as much detail as we want. I'll give you a minute a page. [LB749]

SENATOR HARR: A minute a page. Do you want that much? [LB749]

SENATOR CHRISTENSEN: No. What in this do we need to change? What...I guess this...there's a lot of changes in here. There's a lot of stuff here. What are we trying to do? What's wrong with what we got? Where are we trying to go with this? [LB749]

SENATOR HARR: Yeah. Good question, again. And I'll give you the overview and you can go...the handout that I gave you has the specifics, the innovations since then. One thing we learned is we changed business...the way we operate business since 1984. Some of that's due to updates in technology, some of that's due to we found better ways

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of communicating with each other, we found better ways of conducting business. So what this does is looks into and takes the reality of the world we live in and updates it to what we do and how businesses operate today, is the overview I would say and why we need to update it. If we don't update our business law...businesses...I mean, it's like our tax system. We constantly have to be updating. If we don't update it, we're going to lose businesses. As Senator Schumacher said, we lose some to Delaware and Nevada. Now that might be just where they incorporate, but we get to keep them here for their brawn, where they actually operate their business, but the "brain" is another state. What we'd like to do is encourage them to be here as much as possible, completely here so they fall underneath our courts so we have a bit of more regulatory control over them and, quite frankly, they use our courts. I know we have very...for instance, we have very good insurance law. I don't have to tell you guys that. And there are a lot of businesses that incorporate here that don't necessarily have their operations here. And I could go into detail on those businesses. But what we want to do is to also create some uniformity so that there is consistency across state lines. And so that's what this does. [LB749]

SENATOR CHRISTENSEN: This being so big, typically regulation scares me. And we're getting more and more all the time. Are we...what all are we truly adding here? I know you give a broad view... [LB749]

SENATOR HARR: Yeah. [LB749]

SENATOR CHRISTENSEN: ...but I understand update in technology, how we exchange things. But, you know, I guess it would be interesting to see who testifies for or against this. But if we get too much regulation on businesses chases them out, too. I know you mentioned Delaware. People go there, I guess. That's just my concern, is the massive change, what's the unanticipated consequences. [LB749]

SENATOR HARR: Yeah. Yeah. You know what? And that's the good thing about using a model business code is that a lot of these are unintended consequences by people much smarter than myself, maybe as smart as you, have already looked at this and have gone through this and this is what they practice. This is what they do for a living. And they look at different industries as well. What this is trying to do is to create a level of certainty so that businesses can know what they can and can't do. I don't think this...this doesn't necessarily add regulation. First of all, because it's law, not regulation. But also what it's trying to do is create a level of certainty and a level playing field so that everyone knows what is expected of them. And some businesses will pay a premium just to know that...so they know what the rules are ahead of time. I'm not saying this creates new rules. I think this creates certainty, to be honest, compared to what we already do. We updated the Limited Liability Corporation Act a couple of years ago. This is similar to that. [LB749]

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SENATOR CHRISTENSEN: Okay. Thank you. [LB749]

SENATOR HARR: Uh-huh. [LB749]

SENATOR GLOOR: Senator Carlson. [LB749]

SENATOR CARLSON: Thank you, Senator Gloor. Now there's an awful lot of new material in here because, if I'm looking at it right, it looks like the first 270 pages are all new material. And then from there on, it's...it looks like existing law and... [LB749]

SENATOR HARR: Yeah. I wouldn't say it's new language, I'd say it's different language. It's not as though we all of a sudden changed what a business is and what it isn't. What we're doing is going through and clarifying. And we may be rewording slightly or we may be moving sections so it's new words. But it's actually...when you go through it, believe it or not, it's actually very readable and very easy to understand. That's the whole idea, is we want certainty. [LB749]

SENATOR CARLSON: Well, we're kind of used to having changes in existing law. Well, I know what a new section is. But here...it looks to me...there's 270 pages, which is probably fine. But we go to 342 so if this is not all new language but it's just kind of a change in the way you look at it, it didn't look like there's enough area in the rest of the bill to eliminate what already is current law. So there's a lot of new. [LB749]

SENATOR HARR: Again, I wouldn't say new, I'd say clarification where there have been areas of litigation in the past, and it incorporates some of the common law and case law that has occurred over time since the 1950s. Instead of saying, well, here's what the statute says and then you look at the bottom of the statute book and it has the case law or the law annotated. And so it will have case law that interprets that. What this does, is take a lot of that and put it in the statute so that when you read the statute, you have a better understanding instead of requiring a lawyer who has to, then, read the case law. [LB749]

SENATOR CARLSON: Okay. That's why it looks new. [LB749]

SENATOR HARR: Yeah. [LB749]

SENATOR CARLSON: Okay. [LB749]

SENATOR HARR: But the concepts aren't new. I don't think there's anything radical or revolutionary in here. Like I said, the Model Business Act was last updated in 1984. And we haven't touched ours, really. I mean, we did a little bit, but this is really taking it whole hog. So it's taking into account a lot of what's already occurred out there. [LB749]

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SENATOR CARLSON: Okay. Thank you. [LB749]

SENATOR HARR: Thank you. [LB749]

SENATOR GLOOR: Senator Schumacher. [LB749]

SENATOR SCHUMACHER: Thank you, Senator Gloor. A couple things. First of all, this repeals in the last page or two, doesn't it, most all the existing corporate law? There's a repealer section repealing a bunch of sections. [LB749]

SENATOR HARR: Does it repeal it? That's a good question. [LB749]

SENATOR SCHUMACHER: Yes. I seem to think it does repeal it when I looked at it. [LB749]

SENATOR HARR: Yes. Yeah. [LB749]

SENATOR SCHUMACHER: So we're throwing out everything... [LB749]

SENATOR HARR: Oh, yes. [LB749]

SENATOR SCHUMACHER: ...and bringing in the new. Now how would you... [LB749]

SENATOR HARR: Happy New Year. [LB749]

SENATOR SCHUMACHER: Yeah. How would you, you know...you're a practicing lawyer... [LB749]

SENATOR HARR: Yeah. [LB749]

SENATOR SCHUMACHER: ...in Broken Bow, Nebraska. You've got your corporate forms all set up. You know the rules of how to file and how to dissolve and... [LB749]

SENATOR HARR: Uh-huh. [LB749]

SENATOR SCHUMACHER: ...how to do corporate minutes. And all of a sudden, you have all this dumped on your desk and you've got to start over again. Isn't that going to drive up the cost of setting up corporations in the state? [LB749]

SENATOR HARR: Well, no more than when we passed the Nebraska Uniform Limited Liability Company Act. [LB749]

SENATOR SCHUMACHER: But that was a completely new animal. [LB749]

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SENATOR HARR: This is...well, no, but limited liability existed before. We updated it. Will you have to change some forms? Yes. But, again, this is incorporating what is best practices. [LB749]

SENATOR SCHUMACHER: Then the other thing is, you mentioned that this is... [LB749]

SENATOR HARR: And we have CLE, too. [LB749]

SENATOR SCHUMACHER: Yeah. This is intended to bring things into the post-1990 world. One of the issues that is...comes up--and I have not read the bill enough to know if it's addressed here--is in the old world, a lot of things done internally in a corporation, either they were done on scraps of paper or they were not electronically recorded or they were just in private conversations and not subject to discovery should the corporation be involved in a lawsuit because they were never recorded. [LB749]

SENATOR HARR: Uh-huh. [LB749]

SENATOR SCHUMACHER: Now e-mail and everything is recorded or can be recorded. Does this address the...and set up safe harbors as to when you can get rid of internal memo and things like that for discovery purposes? [LB749]

SENATOR HARR: Doesn't have a safe harbor in there as far as how long you have to keep it, if it's a year or two years, to the best of my knowledge. If you think that should be in statute, we can work on that and I can work with you. That's the page 82, we can make it Nebraska centric. [LB749]

SENATOR SCHUMACHER: Okay. Thank you, Senator. [LB749]

SENATOR GLOOR: And I would...go ahead, Senator Campbell. [LB749]

SENATOR CAMPBELL: No, that's all right. [LB749]

SENATOR GLOOR: And I would tell committee members, we will have other testifiers, I know, who will be up here who might be able to, in their testimony, or will address some of these questions not to mention the fact that we have the resident expert as committee counsel who, when we Exec on this bill, will have a chance to maybe clarify some of these issues also. Senator Campbell. [LB749]

SENATOR CAMPBELL: Senator Harr, I have to be honest, I have not read the bill. Okay? Senator Carlson was trying to figure out that issue. But in looking at the statement of intent for the bill, can you explain to me--just because I would have no



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background in business law--it says in the final paragraph--well, second to the final paragraph--it talks about the fact that it will reference to biennial fees would be changed to biennial occupation taxes. There are people who absolutely hear the word "occupation tax" and run. Can you kind of explain why that's being changed to occupation tax? [LB749]

SENATOR HARR: It's codifying. So in some parts of law, it says "tax" and in other parts it says "fees." And we aren't really...there's no real rhyme or reason why it says that. So all we're doing is taking that and unifying the language. [LB749]

SENATOR CAMPBELL: Oh, okay. I guess I'm more concerned about the word "occupation." [LB749]

SENATOR HARR: Yeah. We're not changing any definitions other than, literally, sometimes it says "fees" and sometimes it says "taxes" and that's all it is. It's saying consistently across the board, it is this. [LB749]

SENATOR CAMPBELL: Okay. Thank you. [LB749]

SENATOR HARR: Thank you. [LB749]

SENATOR GLOOR: Other questions? Seeing none, thank you, Senator Harr. [LB749]

SENATOR HARR: Thank you. [LB749]

SENATOR GLOOR: Are you going to stay around to close on this? [LB749]

SENATOR HARR: I will. Thank you. [LB749]

SENATOR GLOOR: We'll now move to proponents for the bill. Good afternoon. [LB749]

COLLEEN BYELICK: Good afternoon. For the record, my name is Colleen Byelick, it's C-o-l-l-e-e-n B-y-e-l-i-c-k. I'm the general counsel for the Secretary of State's Office here on behalf of Secretary Gale in support of LB749. I'd like to thank your committee counsel, Bill Marienau, and Senator Harr for including our office in discussions about this bill and for listening to our suggestions and incorporating them into the bill that you have before you. As the filing office for corporations and other business entities, we do believe that it's necessary to periodically review and revise existing legislation which pertains to corporations and other business entities and adopt changes to model and uniform laws so that the entities governed by these laws have a solid framework to operate within. In Nebraska we have approximately 40,000 domestic business corporations and 12,000 foreign corporations. The current Business Corporation Act, as you've heard, was adopted in the mid-'90s. And since that time, we have seen changes

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such as the creation of the limited liability company and the concept of mergers of different entity types and conversions from one entity type to another. We've also seen the rise in popularity of on-line filing as technology has evolved to support those services. And the bill attempts to address those changes that have occurred over the last 20 years and we believe that it's time to update the business corporation law to reflect these changes. And thank you for allowing me to appear before you today and I can try and answer any questions you may have. [LB749]

SENATOR GLOOR: Thank you, Ms. Byelick. Questions of her? Seeing none, thank you for your testimony. [LB749]

COLLEEN BYELICK: Thank you. [LB749]

SENATOR GLOOR: Next proponent? [LB749]

KATIE ZULKOSKI: Good afternoon, Senator Gloor and members of the committee. Katie Zulkoski, Z-u-l-k-o-s-k-i, testifying on behalf of the Nebraska State Bar Association in support of LB749. And like the testifier before me, I'd like to thank committee counsel and Senator Harr and his office and Senator Gloor for your work on this in the...over the interim. The interim study was very helpful in getting this bill ready for introduction. Members of the bar association's Business Law Section were involved in looking at this bill, reviewing the numerous drafts. This weekend, preparing for the hearing, I looked over the numerous drafts that the interim study had gone over. And it looks to me like this is number seven or eight that...in making sure that this matched up with other business entity laws that we have on the books. And so this was definitely the subject of careful study. The Business Law Section recommended supporting this bill and the bar association's legislative committee and House of Delegates agreed that this is a bill to support. The comments that the committee members made were that it starts to recognize that in business and in modern business, the businesses really interact between states and so it's important to have, as close as we can, state laws that recognize and interact well with other state laws. And for that reason, we are in support of the bill. And I'd be happy to answer any questions. [LB749]

SENATOR GLOOR: So this has been approved by the House of Delegates? [LB749]

KATIE ZULKOSKI: It has, absolutely. And they support the bill. [LB749]

SENATOR GLOOR: Okay. Questions? Seeing none, thank you for your testimony, Ms. Zulkoski. [LB749]

KATIE ZULKOSKI: Thank you. [LB749]

SENATOR GLOOR: Next proponent. Mr. Ruth, nice to have you here again. [LB749]

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LARRY RUTH: (Exhibit 2) Senator Gloor, very nice to be here. And I have some testimony here for this which I'm going to cut down considerably. My name is Larry Ruth, that's R-u-t-h. I'm an attorney here in Lincoln and I'm here in my role as one of Nebraska's commissioners on Uniform State Laws. We used to have a very long name called the National Conference of Commissioners on Uniform State Laws and now we've just shortened it a bit. We are a group of folks here in Nebraska, five of us, who worked with this national organization to come up with uniform acts, uniform and model acts, but mostly uniform acts, and then we'd bring them to the state for its consideration. This is not one of our uniform acts. This is an act which is developed, as I understand it, from a committee on corporate laws of the Section of Business Law of the American Bar Association. But this is the foundation, this act that we currently have, the Nebraska Business Corporation Act. It gives the foundation or the backbone of corporation law in Nebraska. And we do have a number of uniform acts which would grow on this and which would be built on this such as the Uniform Limited Liability Act and others. So how you have our basic corporation law determines whether or not we are able to put some of the uniform acts on top of that. Now you had adopted, over the years, a number of uniform acts and that's been, I think, beneficial to the state. As you were looking at one of them dealing with an entities act called the Model Entity Transactions Act, it became apparent to us that it would be valuable if we would just, first of all, update the Model Business Corporation Act so you could have this firm foundation. So those of us who are the Uniform Law commissioners, support this effort. And not because it flows out of one of our efforts, one of our products, but because it gives us foundation. It is time to update our business corporation law. Many states have already updated it with this kind of a law, this kind of a bill. And it would help us, then, in developing other types of business laws which are based upon it. I would like to also thank the members of your staff, a member of your staff who did the lion's work on this. And it's been quite an effort. I would mention something to you, Senator Carlson. You said, if you look at the bill, it looks like we have whole scale new language. And...but somewhere then I think Senator Schumacher remarked that there is the repeal of about 200, as I have looked it up briefly, about 200 sections of the current Model Business Corporation Act. So rather than doing a very confusing thing, and that is taking each one of those sections and saying what little changes have been made, it sometimes makes a lot of sense to cast off what you have there and have it all look like new language so you can read it and make sense of what it looks like in that form. So thank you very much for allowing me to testify. And I appreciate the effort that you have put into this and will put into it. [LB749]

SENATOR GLOOR: Quick question, Mr. Ruth. I understand this isn't a product of the Uniform Law Commission, but am I correct in my conversations with committee counsel that we're likely looking at a major redo of business entity statutes that are coming from the Uniform Commission and this, for want of a better term, will help pave the way or prepare the way when that day comes, which may not be far off? [LB749]

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LARRY RUTH: Well, we would like to offer to you the Model Business Entities Transactions Act, I believe is the whole full name of it, and that would be based upon this if it was adopted. It's sort of like putting a new car on an old chassis. You want to make sure that the chassis is right when you put the new engine and the new interior and exterior on it. That's really what we're doing here. We're fixing up the old chassis and making sure it's strong enough to hold the new types of entities. And even if we don't put new entities on it, there are good things that have been developed in the Model Business Corporation Act which I can't speak to, incidentally. Steve Willborn was slated to be here today. He has to teach. He's at the law school and so I'm picking up his testimony. [LB749]

SENATOR GLOOR: Okay. Other questions? [LB749]

LARRY RUTH: Thank you. [LB749]

SENATOR GLOOR: Seeing none, thank you. Other proponents? Anyone who would like to speak in opposition? Anyone in a neutral capacity? Senator Harr, you're recognized to close. [LB749]

SENATOR HARR: (Exhibit 3) Thank you. The fact that there was no one neutral or in opposition to recommend how this could be done better speaks volumes to the work that Mr. Marienau did on this bill over the summer and our LR187. This process has been well vetted. Your concerns are valid. It is...any time you go into a new area of law, it can be very scary. And I understand that. But that's why we did the work ahead of time. And we talked to those in the field and those who do this type of work. And as you can see, thanks to the hard work of Mr. Marienau, there is no one here. And if you had conflicting principles or ideals, those have already been addressed. So I would thank you for your time today and ask that you please advance this bill. Thank you. [LB749]

SENATOR GLOOR: Thank you, Senator Harr. And we have letters of support, I believe they're both support, from Howard Kaslow and Julie Karavas. [LB749]

SENATOR HARR: That's correct. [LB749]

SENATOR GLOOR: Any final questions for Senator Harr? [LB749]

SENATOR HARR: Oh, one other thing. This doesn't...this has an operative date of 2016. So that's going to give practitioners in the field plenty of time to get adjusted to the language in here and to...like I said, we have CLE, continuing legal education, for a reason, so that they can get up to date and up to speed on this when it hits the ground... [LB749]

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SENATOR GLOOR: Point well worth mentioning. Thank you. [LB749]

SENATOR HARR: ..if it does. Thank you. [LB749]

SENATOR GLOOR: Thank you, Senator Harr. And with that, we will close the hearing on LB749 and move to LB751. Good afternoon, Senator Conrad. Sadly, do you have any other bills coming before us? I don't think so. [LB749]

SENATOR CONRAD: Today? [LB751]

SENATOR GLOOR: No. This session. [LB751]

SENATOR CONRAD: Ever? I don't think so. I don't think so. [LB751]

SENATOR GLOOR: I don't believe so. That, sadly, would mean this may be your last time presenting in front of us. [LB751]

SENATOR CONRAD: First and last. [LB751]

SENATOR GLOOR: Yeah. [LB751]

SENATOR CONRAD: (Exhibit 1) Good afternoon. Senator Gloor, members of the committee, my name is Danielle Conrad, that's D-a-n-i-e-l-l-e C-o-n-r-a-d. And I represent the "Fightin' 46th" Legislative District of north Lincoln. I am here today to introduce LB751, an act that would allow a corporation to elect to become a benefit corporation. The benefit corporation's purpose is to create a general public benefit such as providing low-income or underserved individuals, promote economic opportunity in underserved populations, to protect and restore the environment, to promote the arts or sciences, etcetera, and to provide a flow of capital to entities with the purpose to benefit society and/or the environment. Benefit corporation legislation has been passed in several states recently and is pending in many more this year. This will help Nebraska compete by allowing corporations the option of becoming a benefit corporation if they so choose. I'm pleased to note that the original drafter of the benefit corporation model legislation, attorney William Clark, is joining us here today from Pennsylvania and will provide testimony after my opening and is happy to answer any questions you may have. I urge your favorable consideration of the legislation. I'm happy to answer any questions. And I did want to bring forward a letter for the record to submit on behalf of the director of entrepreneurship and innovation from the Greater Omaha Chamber of Commerce, as well, in support, who could not join us this afternoon. Thank you. [LB751]

SENATOR GLOOR: Thank you, Senator Conrad. Questions for Senator Conrad? Senator Christensen. [LB751]

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SENATOR CHRISTENSEN: Thank you, Chairman. [LB751]

SENATOR CONRAD: Hi. [LB751]

SENATOR CHRISTENSEN: Senator Conrad, I want to make sure I heard you right first. It allows a current corporation to set up a benefit corporation for purposes of, whether it's environmental issues, so it's kind of like something that they want to donate to. Is there a tax benefit for doing this? I guess I'm trying to figure out why if you've got a corporation already, they'd set up a second corporation. Do I understand that correctly? [LB751]

SENATOR CONRAD: Yeah, I think I follow your question. And I think that that's a wonderful question. There's a lot of confusion about whether and how a B corp would be analogous to or distinctive from a nonprofit corporation. And I think what's important to remember about a B corp is that there is a profit motive that is still in play and that distinguishes it from a nonprofit. And really what we're talking about here is a way for some entrepreneurs and innovators to signal to shareholders or investors that they also, in addition to profit, have a social benefit that they are seeking to produce. [LB751]

SENATOR CHRISTENSEN: But would the benefit corporation be able to make a profit? [LB751]

SENATOR CONRAD: Yes. [LB751]

SENATOR CHRISTENSEN: Or it's just moving profit from the corporation? [LB751]

SENATOR CONRAD: No, a benefit corporation still takes into account profitability. That's why it's not a nonprofit. [LB751]

SENATOR CHRISTENSEN: So they're setting up a...they might be just moving a portion of one of their individual businesses over here so they can be...just use all the profits off of it for doing beneficial programs? I guess I'm not understanding why not just make it a nonprofit and donate it there and go that direction. [LB751]

SENATOR CONRAD: Uh-huh, sure. [LB751]

SENATOR CHRISTENSEN: You're right on where I'm trying to ask the question. I'm not sure how to ask it maybe. [LB751]

SENATOR CONRAD: Yes. And you know, part of the failure may my own, Senator Christensen, because I consider myself far more a student of these matters rather than an expert. And so maybe Mr. Clark who is behind me, will be able to answer more specifically about the distinguishing nature. But, you know, when I was chosen by my

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peers in this body to lead the Entrepreneurship and Innovation Task Force of the Nebraska Legislature, we had a chance to interface and work with entrepreneurs all across our great state. And that ushered in important evolutions to our economic development structures. And this is really continuation of that work. This is a new idea that doesn't take away anything from existing models, that just helps people who do elect to do so and who are interested in doing so, really send a signal to socially conscious investors and consumers that their business model is a little bit different than the traditional business model that we're all familiar with. But I'm confident that Mr. Clark will be able to provide you a very clear explanation as to how a B corp is separate and distinct and important and different than a nonprofit corporation. [LB751]

SENATOR CHRISTENSEN: Thank you. I'll wait for him. [LB751]

SENATOR CONRAD: Yes. [LB751]

SENATOR GLOOR: And thank you for reminding us of the kind of the impetus behind this being some of your work on the behalf of the body. Any other questions? Senator Carlson. [LB751]

SENATOR CARLSON: Thank you, Senator Gloor. Senator Conrad... [LB751]

SENATOR CONRAD: Yes. [LB751]

SENATOR CARLSON: ...just help me as a layman. And you maybe even said this, but give me a little layman's definition of a benefit corporation. [LB751]

SENATOR CONRAD: Sure. There is an example that, well, anybody with young children on the committee or grandchildren may be familiar with. There is a company called Plum Organics which manufactures and distributes a type of baby food that has developed, I think, a very strong brand in relationship with a lot of parents, including myself, who look for those types of attributes when deciding about what they want to feed their children. They are really organized around this model and now have become part of Campbell's Soup. And I know that Mr. Clark can talk specifically about their experiences of different types of businesses in other states that have availed themselves to this model. [LB751]

SENATOR CARLSON: And then maybe I'll ask Mr. Clark. But then what are the benefits to those who create the corporation? [LB751]

SENATOR CONRAD: Sure. [LB751]

SENATOR CARLSON: Tax benefits? [LB751]

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SENATOR CONRAD: No. If you're thinking in terms of like a charitable tax kind of benefit, no. That's not in play in this legislation at all or with this type of business model. This is really about corporate structure and it's about profit. But it's also about changing the relationship and how we define and discuss the fiduciary duty that the corporation has to its shareholders and that by allowing them to take into account things beyond just profit, in addition to profit, things like long-term sustainability, environmental impact, or other factors that contribute to the social good. It just provides a new option for those interested social entrepreneurs to utilize this model. [LB751]

SENATOR CARLSON: Okay. Thank you. [LB751]

SENATOR GLOOR: Can I...in my own mind, again, based upon discussion I've had with counsel, an example...not an example, but whereas most corporations are formed with a duty towards the bottom line and the board has that duty to the stockholders to generate a profit, this would provide a corporation an opportunity to, say, make watering systems with an idea towards the bottom line, but also minimizing their carbon footprint. And so the minimizing their carbon footprint, obviously, may come at the expense of the bottom line. But it's an understanding, if you invest in this corporation, that's the trade that you make. [LB751]

SENATOR CONRAD: Yes. That's a wonderful example. Thank you for providing that for the record. And I would be remiss if I also did not thank learned counsel, Bill Marienau, for his wonderful assistance in helping us through an interim study on this topic over the interim period and then in drafting of this legislation here today. But that's right. I think that overall what this legislation does is provide a unique and important opportunity to both investors and entrepreneurs to define what the return on investment may be rather than looking just at the next returns and the next quarter, but to maybe look beyond that to social impacts, to long-term sustainability, or achieving the public good. We were kind of joking over the noon hour when we talked about this is, the bottom line isn't always the primary force. We know that from our lives as state senators. We could all find, probably, another way to make more than \$12,000 a year and a different way to spend our time. But we take into account our ability to impact the common good, our ability to serve, the rewarding nature of this work, and serving our state and our constituents. And, you know, while not exactly analogous, it does play into that same model. The same with our public contracting statutes. We don't say we only give the contract to the lowest bidder, we give it to the lowest responsible bidder because we provide public policy considerations about how we want to spend and utilize our tax dollars. So there are some other models in other areas of law and governance that I think bode well for this type of opportunity in corporate formation and structure. [LB751]

SENATOR GLOOR: Thank you. Senator Campbell. [LB751]

SENATOR CAMPBELL: Thank you, Senator Gloor. Senator Conrad, it would seem to



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me that not only would they be sending a signal about the product or the service that they're selling, but should they get to the point where they do give charitably as a corporation, it would send a message to the investors that their gifts perhaps would go to the same endeavor that they have built their corporation around. Would that be accurate? [LB751]

SENATOR CONRAD: Yes. That's a great point. Thank you, Senator Campbell. And I think that's absolutely correct in noting that many corporate citizens are incredibly generous when it comes to providing resources to the nonprofit and serving the public good and for tax benefits or because it's a part of their mission. But it does provide a nice dovetail for companies that are so oriented to further that work on both the for-profit side and on their charitable donations. And I think the other piece that's important about this legislation is that in addition to just sending a signal, there's very clear accountability standards with the reporting that comes forward so that investors and consumers, policymakers, and otherwise can evaluate how that public good is being served. [LB751]

SENATOR GLOOR: Seeing no further questions, thank you, Senator Conrad. [LB751]

SENATOR CONRAD: Right. Thank you. I will go ahead and waive my closing at this time just because I'm running between a few committee hearings this afternoon. But I appreciate the opportunity and your kind attention and consideration. And I'm sorry I won't be back before this fine committee again yet this session. But thank you very much. [LB751]

SENATOR GLOOR: Thank you. Good afternoon. And we believe the weather here is a little nicer than the weather where you came from, sir. [LB751]

WILLIAM CLARK: (Exhibit 2) The weather is significantly better here. They are in the process of getting eight inches of snow in Philadelphia at the moment, so. Senator Gloor and members of the committee, my name is William Clark, W-i-l-l-i-a-m C-l-a-r-k. I'm a partner with a law firm in Philadelphia, Pennsylvania, and I've been involved in the movement to create benefit corporations around the country. The clerk is passing around prepared testimony. I'm going to spare you a reading of that testimony and just hit some of the highlights. And then I think it would be most useful if we could spend our time addressing questions and making sure that everyone understands what is being proposed here. The benefit corporation form, first of all it's important to emphasize, is not a new form of entity. It's a set of provisions that get layered onto the basic business corporation law rules. So a benefit corporation is a business corporation. If you pass the model Business Corporation Act that you were just considering, a benefit corporation would be subject to all of those provisions except where there is a specific provision to the business corporation statute that would change the rules. And I'll tell you what those are in just a minute. The best way to think about a benefit corporation is to think of it as

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a form of business corporation that's designed for people that want to pursue what we call the triple bottom line. The triple bottom line is the three Ps. The Ps are profits, people, and planet. And so the notion is that the social entrepreneurs that want to set up benefit corporations want to make money, they want to conduct business on a for-profit basis. But they want to do it in a way that has a positive impact on people, their employees, society, the communities where they have operations, and also on the environment at the same time. So Senator Conrad mentioned Plum Organics as an example. Plum pays a lot of attention to the quality of its products. It makes sure that they're sourced responsibly and sustainably. It pays attention to its carbon footprint, as was mentioned by the chairman in connection with another business, and it also pays close attention to the working conditions of its employees and to their benefits and tries to give them as productive and supportive a working environment as it can, recognizing that it is in business to make a profit. In fact, that company happens to be a wholly owned subsidiary of a publicly traded company, Campbell Soup, as Senator Conrad already discussed. So the basic point is that these are business corporations. There are no tax breaks. There are no contracting preferences. It's simply a different way of understanding the purpose of the business. What the statute does is to change three things. It changes the purpose of the business itself, it changes the duties of its directors, and it imposes a reporting obligation. And I think as I explain those, they will all make sense. The purpose, obviously, goes directly to this notion of creating the triple bottom line. So in a benefit corporation, the purpose of the corporation is redefined so that it includes, in addition to making a profit, having a positive impact on society and the environment. If that's the purpose of the business, then it makes sense that the duties of the people in charge of the business would also change simply to say that their duty becomes furthering the purpose of the business and producing the triple bottom line result. What that means is that the statute requires the directors, as they're running the business, to think about the impact of the business on all of the stakeholders that the business touches. So depending on what the issue is that the business is considering, that consideration of interest may vary because, in some instances, what they're doing may impact the environment. In others, it may not. In some instances, the decision the directors have to make may impact the employees. Sometimes it will not. But what the statute wants is for the directors to think about the employees each time, think about how they are doing in creating this general triple bottom line, and then using their discretion and their best judgment, make a decision that they think will, at the end of the year as they look back, have maximized the impact of the business both in terms of its financial profitability and also a positive impact on employees, society, and the environment. So those are the first two characteristics: redefinition of the purpose of the entity, redefinition of the duties of the directors. The third distinguishing characteristic is a requirement that every year the business report on how it has done in its pursuit of the triple bottom line. In a typical business corporation that's focused really simply on financial performance, we require the business to give its shareholders a financial report every year. And I know that in the model Business Corporation Act in chapter 16, it has a requirement that the corporation report on its financial performance to its shareholders

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because that's the purpose of the corporation. Here, it was felt important since the purpose has changed that the shareholders receive information on how the business has done in its performance on the triple bottom line. So the statute requires that every year the corporation prepare a report that reports on its performance. That report has to be made publicly available. And the bill provides that it will be filed with the Secretary of State's Office so that anyone in the public who's interested can go and get a copy of the report and find out how the business has done as it's been pursuing the triple bottom line. So those are the basic characteristics. That's what the purpose of the bill is. Let me stop and I would love to take questions and talk to you further about things that occur to you in this regard. [LB751]

SENATOR GLOOR: Let me thank you for your testimony, Mr. Clark. And I'm sure there will be a lot of questions, hopefully, by way of educating ourselves. But I think corporations that I know of that already, I think, focus on more than just the bottom line. Let me use, since I've got a lot of running shoes in my current ownership, like Brooks. Brooks, I think, purports to make sure that, to the extent possible, everything about a Brooks shoes is made, fabricated, assembled in the United States and clearly pay more to have that done. Yet it's an underpinning of their corporate philosophy and business model. If they can do that, would they...I'm trying to understand why this would be necessary when you've got corporations that already, I think, try and do something along these lines. [LB751]

WILLIAM CLARK: Yes, there are a lot of businesses that try to be responsible and that is clearly to be encouraged. The place where this statute will make the most difference in terms of lawsuits and formal enforcement of the purpose of the corporation is in the context of what we call a change of control. Delaware law is very clear that when an offer is made to acquire the company and a director decides to sell the business, the director's only job is to maximize the value of the business in that sale. The director cannot and is not permitted to consider whether one bidder will have a different impact on the employees and employment and the environment from another bidder. So in a situation where there are two bidders for a company and one may preserve its mission and its culture and the other may not, but is willing to pay a higher value, Delaware law says expressly that the higher value has to be taken. That's really the only place where we see actual lawsuits in this area. And I apologize for kind of this is going to sound like a law school class a little bit. But there is a doctrine in the law called the business judgment rule, which says that courts do not second-guess normal business decisions by directors. The courts learned a hundred years ago that they don't have enough information to be able to second-guess directors when they decide to locate a factory in one town instead of another or to make an investment or not make an investment. So the courts stay out of those kinds of decisions. But the one area where they do get involved and review decisions of directors is where there's an offer for the company on the table. And that's where this will make a difference. It's interesting to reflect on the fact that, as you point out, Senator Gloor, a lot of companies behave this way. I think,

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actually, our expectations as a society are evolving and we want businesses to behave this way. We want to encourage that. That's why this is optional. We're trying to garner some experience. We're hoping that businesses will elect this form, will learn how it works, will be able to adjust what's happening. At the moment, there are 18 jurisdictions that have enacted this statute. There has not yet been any litigation so we don't yet have any good information on where there are things that may need to evolve and change. But we do know that there's a lot of excitement within the business community and the entrepreneur community. And I think the letter that's here from the Omaha Chamber today suggests, as well, that there are a lot of entrepreneurs that are very interested in moving in this direction. And so we'll see what experience brings. I hope that starts to address your question, yes. [LB751]

SENATOR GLOOR: Absolutely. Yeah, thank you. I know there are other questions. Let me start at the end and we'll work our way around the table. Yes, Senator Schumacher. Sorry, Paul. [LB751]

SENATOR SCHUMACHER: Thank you, Senator Gloor. You mentioned that there is a publicly available report that these organizations would file each year. Does that include the salary information for how much they're paying their officers and directors? [LB751]

WILLIAM CLARK: No, it does not. And, in fact, the statute says expressly that they are allowed and encouraged to delete not only financial information, but proprietary information that might be in the report. In other words, what the statute requires is that a full report be prepared and given to the shareholders. But then when that report is to be filed with the Secretary of State, the statute says that the corporation can delete proprietary information as well as financial information because, obviously, we wouldn't be helping anyone if we required them to give away trade secrets or confidential information. [LB751]

SENATOR SCHUMACHER: So is it safe to say the bottom line on this bill is that it removes finances or profit as a primary reason for a corporation? Thus kind of, if a shareholder has complaints that, hey, you could have made more money building an apartment building in this part of town than this part of town and you're telling me now that we built it in the poor part of town because we're socially conscious, that would remove the fear that that somehow would expose the corporation to some argument, at least, with its shareholders? [LB751]

WILLIAM CLARK: Yes, that is correct. [LB751]

SENATOR SCHUMACHER: And then the other one would be that the public relations spin or the feel-good spin that comes from being able to say, you know, we're just not all about profit. We're about helping people. [LB751]

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WILLIAM CLARK: Yes. And that's important, but we're very concerned that that public relations spin, as you describe it, not turn into what we call greenwashing, which is the notion that some people...it's a lot like whitewashing. But the notion is that people like to portray themselves as being environmentally conscious and responsible even though they may not be because it's very interesting. The mere fact that people want to greenwash suggests that our social expectations as a society, are moving in favor of wanting people to be more responsible. And people are realizing that there is a public relations benefit to behaving that way even if they don't want to. So we don't want greenwashing, which is why the report has to be public. [LB751]

SENATOR SCHUMACHER: Thank you. [LB751]

SENATOR GLOOR: Senator Pirsch. [LB751]

SENATOR PIRSCH: It's said, I think in the Bible, no man can serve two masters. So when you go away from this kind of single, as you referred to it, bottom-line analysis that the review consists of in terms of how the actors at a company are acting and in accordance with their duty, fiduciary duty and now you move to kind of, as you put them, a triple bottom line, three factors. Does it make it...first of all, when did the...you said you worked on the first one of these that was enacted... [LB751]

WILLIAM CLARK: Yes. Yes. [LB751]

SENATOR PIRSCH: ...in Pennsylvania. Is that correct? [LB751]

WILLIAM CLARK: No. The first statute was enacted in Maryland in 2010. [LB751]

SENATOR PIRSCH: Okay. In Maryland in 2010. [LB751]

WILLIAM CLARK: Yes. [LB751]

SENATOR PIRSCH: So we probably don't have a whole lot of experience in terms of how...or do we? How many companies, then, are operating under this type of form? [LB751]

WILLIAM CLARK: To the best of our knowledge, there are at least 500 that we've been able to identify in the 18 jurisdictions where it's passed. Actually, a couple of those states haven't even taken effect yet. [LB751]

SENATOR PIRSCH: Okay. [LB751]

WILLIAM CLARK: But probably 500 companies in 15 states. [LB751]

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SENATOR PIRSCH: So it's kind on the forefront. It's a cutting issue. [LB751]

WILLIAM CLARK: It's very much cutting edge. [LB751]

SENATOR PIRSCH: Okay. And it's very unique. And I do...you know, it's very interesting to me because I wasn't aware of this existing so I'm glad you're here today. Does it become, in those limited situations...has there ever been any kind of hotly contested suits that have been brought forward in terms of...you know, under this new structure? [LB751]

WILLIAM CLARK: Yes. To date there has not been a lawsuit. [LB751]

SENATOR PIRSCH: Okay. Does it, in your opinion, present a more complex...you know, the duty of the judge, then, to look at these three factors and how to weigh them? I mean, really, does it make such a breadth of acceptable behavior such that as long as it fits within one of those three categories so that even a, you know, a peppercorn in one of the three categories can outweigh an avalanche in the other three categories? [LB751]

WILLIAM CLARK: You've actually raised a couple of different issues which I think all are very important. So let me hit a couple of them. One of the reasons for the annual report is a hope that the shareholders will receive enough information that they will be able to evaluate how the board has done in terms of evaluating these different bottom lines. I'm very sympathetic and understand completely this question of serving more than one master. What's interesting is if you leave aside benefit corporations for a moment and think about what's going on in our economy today, we have this issue that people are wrestling with just in terms of the question of long-term versus short-term profitability. So even when you're looking just at the single bottom line, if we had publicly traded...CEOs of publicly traded companies here today, they would tell you that one of the things they struggle with is the pressure for quarterly earnings and short-term profits as opposed to long-term profits. And there, you've got exactly the same kind of difficult balancing act, even just within one of the single bottom lines. So no one wants to say that we're not asking the directors to do something that may be challenging. But what we are hoping is that directors will take it seriously and try to be responsible and be willing to explain. And we think that preparing the report will actually help them, in their thought process, articulate what they're going to do. You know, I think about this in my own life. Just all of us have time constraints on us and we have to balance requirements of job and family and work. And it's very imperfect, and we don't always get it right. And we try to, at the end of the day, at the end of the year, make things balance, but I'm very sympathetic to what you're saying. I don't think that's a reason not to do it, but I do think that it's something that our society really needs to solve if for no other reason than the short-term versus long-term and how do we create, you know, lasting prosperity and the greatest prosperity. [LB751]

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SENATOR PIRSCH: And I appreciate that answer. I just wonder within the...even, say, to take one of the categories here, the triple bottom line people. And then you have a number of concentric rings that could be included in that category. And it could be as broad as every person on this planet, I would imagine, that that would be an acceptable type of consideration how your company might affect through environmental type of producing smog or smoke. Correct? I mean, it could have that breadth? [LB751]

WILLIAM CLARK: It could, but there is some guidance that we've tried to provide in the statute which is actually more focused on the impact of the business itself. So there is specific reference to the employees of the corporation and its suppliers, to the community in which offices or facilities of the corporation and its subsidiaries and suppliers are located. You can't be all things to all people. We recognize that. [LB751]

SENATOR PIRSCH: Uh-huh. [LB751]

WILLIAM CLARK: But what we're hoping is that the business will be most sensitive to the things that it can have the most control over. [LB751]

SENATOR PIRSCH: Yeah, which would be within...and I...even within the company and the community, there's a number of striding lines. But... [LB751]

WILLIAM CLARK: I'm not disagreeing with you. [LB751]

SENATOR PIRSCH: You disagree? [LB751]

WILLIAM CLARK: I do not disagree. [LB751]

SENATOR PIRSCH: Oh, do not disagree. I'm sorry. [LB751]

WILLIAM CLARK: I mean, it's a very difficult job. [LB751]

SENATOR PIRSCH: Yeah. But...and I'm trying to get a breadth. I'm not trying to... [LB751]

WILLIAM CLARK: Right. [LB751]

SENATOR PIRSCH: ...quibble, but I am trying to understand by these categories who may or may not...you know, is there anybody categorically eliminated? We're not talking about people outside the community except for, I guess, you'd probably include customers, right, who may be located anywhere in the world, possibly. [LB751]

WILLIAM CLARK: Customers could clearly be anywhere. [LB751]

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SENATOR PIRSCH: But even if you were releasing, you know, smoke or CO2 into the environment, it could be...I mean, is this categorically excluding...I mean, am I talking about the possibility of people throughout the world as the corporation determines the breadth of what people are involved here? [LB751]

WILLIAM CLARK: The statute leaves it to the directors. There's an express statement that the manner and the weight to be given to any of these factors is up to the directors. [LB751]

SENATOR PIRSCH: Up to the directors. Okay. [LB751]

WILLIAM CLARK: I mean, we really want to bring it back to the directors and then ask them to explain why they've done what they've done. [LB751]

SENATOR PIRSCH: Okay. And again, I'm just asking questions... [LB751]

WILLIAM CLARK: Yeah, I understand. [LB751]

SENATOR PIRSCH: ...because I'm trying to wrap my arms around this conceptually. Is there...and there's no way...whatever the directors...would they have to beforehand decide what is their definition of people? Or would that just be subject to, as time goes on, a changing as directors form different opinions? [LB751]

WILLIAM CLARK: It is designed so that it can change because we don't want to lock businesses in unnecessarily. The hope is that, again, the directors will be paying attention as the business goes through its life cycle and deciding, in any particular instance, what's right. So if they want to build a new factory, that's a very different decision than if they want to put a new benefit plan in or if they want to get into a new line of business or drop a line of products. You really can't write a statute that's too confining. So we're really relying on the directors to make those decisions. [LB751]

SENATOR PIRSCH: Yeah. And I'd like to hear more specifically about, since there is such a breadth, the planet is one of them. So any...really globally, anything could be encompassed. And if you can help pin that down for me...and people...and certainly the traditional profit. But should there be an action that...well, I guess I'd like to hear about that. When you get into potential litigation where the directors may have done something that personally, I guess, profited...they ended up profiting in some manner and there is an argument that somehow that doesn't fit with the other factors, how do you with this breadth of potential factors there permissible to look at now, weigh...how would a court weigh all those against each other? Is it...and I know you mentioned with respect to the traditional profit motive, that there's quarterly earnings versus long-term earnings that need to be balanced, again. But I just wonder if you have any comment on that. Or I



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tell you what. Rather, if you'd like to, you can submit to my office some sort of additional information. [LB751]

WILLIAM CLARK: I would be happy to do that. And if you have other questions, please feel free... [LB751]

SENATOR PIRSCH: Yeah, I don't want to hog the time here. [LB751]

WILLIAM CLARK: ...to give them to Senator Conrad. But let me just say, that we've thought a lot about that issue. And so there's a provision in the bill about lawsuits can be brought to challenge what the directors do. The first important point to note is that only the shareholders and the directors of the corporation have standing to challenge what goes on. So the other constituencies do not have standing to bring a lawsuit. We've also included in the bill an articulation of what's called the business judgment rule, which tries to keep the courts out of normal second-guessing. But there are a variety of things in here so I would be more than happy to send you some further answers which, frankly, can be shared with the entire committee if that would be helpful, but. [LB751]

SENATOR PIRSCH: Yeah, that would be wonderful. That would be very helpful. [LB751]

SENATOR GLOOR: Thank you, Senator Pirsch. Senator Howard. [LB751]

SENATOR HOWARD: Thank you, Chairman Gloor. And thank you for your testimony, Mr. Clark. I have two questions. The first is, you mentioned that the real potential challenge here is with the change in control. And that's when we would of sort of run into the potential...the Revlon rule from law school? [LB751]

WILLIAM CLARK: Yes, correct. [LB751]

SENATOR HOWARD: Okay. And I guess my question is, because this is so new, because there are only about 500-plus organizations that have done this and made the transition or been created under these auspices, have there been any changes in control and how did that go? [LB751]

WILLIAM CLARK: We don't yet have any experience under this statute in that regard. [LB751]

SENATOR HOWARD: Okay. And then my second question is about measurable outcomes. So, generally, in your reports we see quarterly earnings and we see annual earnings and that's how we measure the success of an organization or a corporation. But can you give me an example of some of the other measurable outcomes that these benefit organizations are using? [LB751]

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WILLIAM CLARK: Yes. The statute says that the report is to be prepared using an independent third-party standard. The thought there is that we don't want the corporation simply to write the report and say in it whatever it wants without some independent reference point. Today, just about every publicly traded company already issues a CSR, a corporate social responsibility report... [LB751]

SENATOR HOWARD: Uh-huh. [LB751]

WILLIAM CLARK: ...which generally are documents that don't have a particular standard that they refer back to, but it's the chance for the company to really talk about what they think they've done well. And they tend to slight what they haven't done quite so well. So our thought was, we ought to mandate using an independent standard. There are at least 10 or 12 of those standards that have already been prepared today. The organization that I have been working with pro bono, B Lab, has one of those standards. It's call the B Impact Rating System. There's something called the Global Reporting Initiative, which is actually an initiative from the United Nations. Underwriters Laboratories has a standard. ISO, the International Standards Organization, has ISO 26000 which would also satisfy this requirement. There's an organization that's been formed that's called the Sustainable Accounting Standards Board, which is working on something even more ambitious than these kinds of standards. The Sustainable Accounting Standards Board is trying to come up with a way of producing an integrated reporting system that actually puts together all three of the triple bottom lines into one report and one metric. They so far haven't issued a standard for any industry yet, so we don't know whether they'll be successful, but a lot of very smart people are spending a lot of time trying to do this. I think, if nothing else, maybe that will give the committee a little bit of comfort that, although this is new, this is something that's getting a lot of attention. Not only around the country, but around the world because there's very clearly a move and a desire to move in this direction because the hope is that we'll see businesses having a much more positive impact. Today, we're in an era of tightening budgets. We're in an era of the sequester and the shutdown and governments, both at the national and the state and local level, are all, you know, strapped for cash. And there is no room for government to do anything else. And what I particularly find attractive about this notion is that it's the business community itself, without any government support, no tax breaks, no bureaucracy, but just the business community being given a structure to try and get more involved and have an impact. I'm sorry, I'm preaching a little bit there. There are at least a dozen standards that people can use that, you know, you could actually find on the Internet that will give you a good sense of what people look at and how they try to measure impact. [LB751]

SENATOR HOWARD: Thank you. [LB751]

SENATOR GLOOR: Senator Campbell. [LB751]

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SENATOR CAMPBELL: Thank you, Senator Gloor. Mr. Clark, I'm just trying to be very clear. In the testimony that you have given us, there is, "Every benefit corporation", and I'm on page 4, "Every benefit corporation has as one of its corporate purposes the creation of a material positive impact on society and the environment taken as a whole." And I just want to be very clear because in the intent statement that was...that's given by the legislator, it says the particular "benefit on society or the environment." It's really "and" the environment, is it not? [LB751]

WILLIAM CLARK: It is "and," yes. [LB751]

SENATOR CAMPBELL: Okay. So that it's like, well...and I've spent my life with children's issues. So it wouldn't be enough for the public benefit just to be enhance children's issues, but it also would be "and the environment". Is that...am I saying that correctly? Or... [LB751]

WILLIAM CLARK: Yes. The thought here is the triple bottom line, not a double bottom line, which would be a great thing. But I think a lot of corporate lawyers, myself included, believe that you already have the ability, and certainly in the new model Business Corporation Act, you can specify a particular purpose for a corporation in addition to it's general economic activity. So you could do a double bottom line. What's different here is the redefinition of the duties of the directors to look broadly at the impacts as the business evolves as opposed to a particular mission or purpose. So it is an "and," very clearly. [LB751]

SENATOR CAMPBELL: It is an "and." And so, for my colleagues if you're looking at the statement of intent or the bill in the fourth paragraph, it's not "or" the environment, it is "and"... [LB751]

WILLIAM CLARK: Yes. [LB751]

SENATOR CAMPBELL: ...as Mr. Clark's testimony is very clear and you do mean that in the most...in the sense of that I might be promoting children's issues, but I also want to make sure that as I conduct that corporation, I am affecting the environment. [LB751]

WILLIAM CLARK: That's exactly right. We don't want people to be good to their employees, but massive polluters. [LB751]

SENATOR CAMPBELL: Got it. No, I understand that. [LB751]

WILLIAM CLARK: I mean, you can't be this and do that, is all I mean. [LB751]

SENATOR CAMPBELL: I could have said that. Thank you, Mr. Clark, for clarifying that.

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[LB751]

SENATOR GLOOR: Other questions? Seeing none, thank you for your testimony and...  
[LB751]

WILLIAM CLARK: Thank you very much. And I appreciate the committee's patience and all of the questions. I'm happy to respond further later. Thank you. [LB751]

SENATOR GLOOR: Thank you. Next proponent? Good afternoon. [LB751]

MICHAEL WALLACE: (Exhibit 3) Good afternoon. [LB751]

SENATOR GLOOR: We will get a page back here in just a second, I'm sure. [LB751]

MICHAEL WALLACE: Thank you for having me, Senators. My name is Michael Wallace, I'm from Omaha. I come here as a concerned citizen on LB751, the Nebraska Benefit Corporation Act. [LB751]

SENATOR GLOOR: And you're a proponent? [LB751]

MICHAEL WALLACE: I'm a proponent, yes. I've prepared a few remarks, I will not read them all in full; they're enclosed. And there are three things that I hope you take away. [LB751]

SENATOR GLOOR: Mr. Wallace. [LB751]

MICHAEL WALLACE: Yes. [LB751]

SENATOR GLOOR: Could, would you please spell your name so we have that on the record? [LB751]

MICHAEL WALLACE: Michael, M-i-c-h-a-e-l, and then Wallace, W-a-l-l-a-c-e. [LB751]

SENATOR GLOOR: Thank you. [LB751]

MICHAEL WALLACE: A few things I hope to take away...you take away. One is that my reading of the Nebraska Benefit Corporation Act is that it's an incentive. It incentivizes businesses to do some of the things that a normal business corporation would not necessarily have to do. So it's an incentive. Two, is that business schools all across the country...I'm in banking currently. And so business schools all across the country are moving in the direction of social entrepreneurship. And that's the third piece to take away is that social entrepreneurship, whether it's Harvard, Yale, Stanford, Columbia, they're working with corporations now like the banks that I work for, like Goldman Sachs

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and others, to build these incentives for social entrepreneurship. Along with what Mr. Clark mentioned, there's several states that have already instituted this. And what I'm finding as I work with young entrepreneurs and nonprofit corporations is that they're starting to incorporate in other states. And that's not necessarily good for Nebraska. So as people are looking to find incentives for this hybrid between a corporation and a nonprofit, and that's how I read it. It's someplace in between. They're finding ways to do this by incorporating in other states. And so my testimony includes that this intersection between business and common good shouldn't be considered as mutually exclusive. I think that's been part of a problem. And I'll read a quote here from Peter saying that I think everybody's familiar with. And if you're not, he wrote the The Fifth Discipline. Peter Senge says that leadership should always start with where we are and who we are as a community and that as far back as Shell, they've done studies that the best corporations in America have always considered the common good and the community in their business model. They understand themselves as part of the human community. And we should encourage and incentivize, which is my first point, we should incentivize businesses in Nebraska to be community focused. He continues to say that we've lost sight of sense of a corporation as part of a community, but a business is simply a group of people working to build a better community. In my work out in the community right now, what I'm finding is that if...these young entrepreneurs...and it maybe...my characterization would be that's...it's as much for the young entrepreneurs and the new starting business as it is for the sort of established businesses and the Fortune 500 companies. And so they're able to, when I was listening to Mr. Clark comments, they're able to access two or three additional funding sources because of this. They can say, here's what I want to do in Old Market in Omaha. I want to build a technology company, but I also think that there's a benefit that does common good. And so instead of just being able to access someone who's interested in raising their capital or seeing a return on investment, they're also able to reach out to people who are interested. And it could be green energy, it could be other things like that. I have enclosed five articles in my testimony. These articles are: "How Sustainable Is Sustainability" by Harvard University Business School; how to close the funding gap between nonprofit and profit; a recent article The Wall Street Journal which someone mentioned, not this article, but how we share information between corporations and nonprofits. That was an article about Johnson & Johnson. "Social Finance" which is becoming a really big buzz word in terms of social impact bonds. And there's some work that's been done in New York with companies like Goldman Sachs and Morgan Stanley that shows how they can reduce recidivism rates and how they can improve that. And I know there's been some interest across the state in that. And also there's an "Environment, Social Finance" study that I've also included. My last comment is that when we talk about price and cost and benefit, we also...one of the questions, I think it was Senator Howard's question, how do you measure this? Some of the nonprofit agencies and others are needing to be encouraged to measure total social cost. But when you look at a person, I know there are some issues here with, again, recidivism or prison infrastructure, what is the total social cost to the society or that community? We can measure both in a corporation like

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this and so you don't just have to say, well, we returned 5 percent or 10 percent investment. And as a banker, that's very helpful to me to be able to go out and be able to provide these opportunities and options to others. Thank you for your time today. If there are any questions for me, then I'll take them. [LB751]

SENATOR GLOOR: Thank you, Mr. Wallace. Senator Garrett. [LB751]

SENATOR GARRETT: Thank you, Senator Gloor. Thank you for your testimony, Mr. Wallace. I'm curious. A couple of times you said it incentivizes businesses. How does it do that? [LB751]

MICHAEL WALLACE: As I read the bill, I think that a company can sit down with its board of directors and, if this is written into statute, then they can say, as Mr. Clark was saying earlier, we don't only have to increase shareholder return by 5 percent. We also have statutory support that suggests that we should do these other things, create jobs, reduce recidivism rates, green energy. Currently, there's nothing...you know, if I'm trying to sell a socially responsible bond and someone says to me, well, it didn't return as much as the other one. Then more than likely, the person is going to buy the investment that gives the greater return. In this case, the board of directors can make a decision to turn to their shareholders and say, we're doing all the things we set out to do, among which are the socially responsible goods. Now, as I mentioned earlier, all the best companies in this country have had a social responsibility element. I think that as this body considered it, you're just sort of incentivizing those companies to do that. You're codifying it and you're giving them a way to talk to their shareholders from both the nonprofit side and the profit side. [LB751]

SENATOR GARRETT: Having worked for a Fortune 500 company, I was a little bit disillusioned sometimes with their lack of responsible corporate citizenship, as I recall. I'm a small business entrepreneur... [LB751]

MICHAEL WALLACE: Uh-huh. [LB751]

SENATOR GARRETT: ...and one of the specific things I formed this company for was to take care of people. And you know, obviously, we're in business to make a profit but, you know, when we looked to renovate a building, we wanted to be as green as possible, we have great benefits for our people. I wrote into my business plan that at least 10 percent of our profit every year is going to go back into the communities where we work and live. But still, the basic driving purpose of that corporate entity is to be profitable. And I'm almost a little bit afraid of this in the sense that a board of directors could actually use it as an excuse, oh, well, we're doing X, Y, and Z is the reason we're not returning the amount of profit that we might otherwise be held accountable for the kind of return on investment. [LB751]

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MICHAEL WALLACE: Senator, I see your point. What's the name of your corporation?  
[LB751]

SENATOR GARRETT: The Garrett Group. [LB751]

MICHAEL WALLACE: The Garrett Group. Look, I'm a proponent but I can see there's a couple of negatives. And I'll close with that. But I can see The Garrett Group starting another corporation. It could be an arm of The Garrett Group and that arm could be designed and directed to focus on a particular social issue. And you might have a greater net that you could cast for funding because some socially responsible investors would come to me as a banker and say, we're really interested in this because he's doing green energy and water. And now we really want to invest in The Garrett Group. And you could simply have maybe an arm of your existing enterprise that does that. I think what you mentioned is one of the possible negatives. I think the other negative, which was mentioned earlier, is sort of greenwashing. And then, you know, companies that are going to use that socially responsible arm to continue to do some of the, you know, unsavory things that they might have done anywhere and say, well, look here. You can invest in this part of our company. [LB751]

SENATOR GARRETT: Thank you. [LB751]

SENATOR GLOOR: Thank you. Yes, Senator Schumacher. [LB751]

SENATOR SCHUMACHER: Thank you, Senator Gloor. You mentioned our friends in the Ivy League and an analysis that brings in the total cost, social cost, community cost. I want to read you a passage here from a publication of the Harvard Business Review: How much does a burger really cost? You pay perhaps \$3, but according to my back-of-the-envelope analysis, the authentic economic cost may be closer to \$30. Environmental and health costs, as much as \$10, are shifted to society in future generations. And benefits are borrowed from people, communities, and societies. The beef, water, land, and even jobs that go into burgers are subsidized by as much as \$20. If, for example, water were no longer subsidized in the Great Plains, a pound of ground beef would cost \$35, estimates Mr. McWilliams, a fellow at the Agrarian Studies at Yale University. I don't mean to deny the mouth-watering temptation of a fresh, juicy burger. Rather, my point is about the stubborn reality of creating value. The \$27 gap between the \$3 or less the average American pays and the \$30 or so a burger actually costs is economic harm that is done by the industrial era food producers to people, communities, society, and the natural and world future generations. So under that kind of analysis, would it be fair to say that none of these benefit companies are going to be selling beef? [LB751]

MICHAEL WALLACE: None of the young entrepreneurs that I've talked to propose selling beef because I don't know if that means...I think that's a very, very complex

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analysis. And I'd be happy to get back to you and talk about the differences between comparative analysis and competitive analysis, which I think all goes into understanding this. And I think that as we move forward in society, we're going to really be served well by figuring out how to balance the sort of competitive nature that we see on this purely business side with the cooperative nature on the...and I think it's going to serve us well in the international markets as well. [LB751]

SENATOR SCHUMACHER: Thank you. [LB751]

SENATOR GLOOR: Senator Carlson. [LB751]

SENATOR CARLSON: Thank you, Senator Gloor. You talk about social cost and then I think of social benefit. But this whole concept, I'm still trying to get my head around it, of benefit corporation because in the bill here, we can see there's very little fiscal note to it. So that would mean it's not costing the taxpayers in Nebraska anything to get into the benefit corporation. Therefore, there's no tax break to a benefit corporation and, therefore, little cost to the citizens of the state. But rather than focusing...and I don't know if it's a focus even, but you mentioned social cost. Where does the effort come to identify social benefit versus social cost? [LB751]

MICHAEL WALLACE: I understand your question. So I think you're parsing the concepts of social costs and social benefit and you're saying that they're not necessarily the same. [LB751]

SENATOR CARLSON: Well, what I'm maybe getting at is, since I don't see any real cost here as far as the citizens of Nebraska are concerned...so...and if there's no real tax break to a benefit corporation... [LB751]

MICHAEL WALLACE: Okay. [LB751]

SENATOR CARLSON: ...it must be partially a feel-good result that those that take part in a benefit corporation and really believe they're contributing something to society by preventing social cost. [LB751]

MICHAEL WALLACE: Okay. [LB751]

SENATOR CARLSON: Would that be close? [LB751]

MICHAEL WALLACE: I understand your question. I think there are two ways to answer that question. One, is to use some of what Senator Schumacher mentioned. So there are social costs of not operating a business with the community's interest, you know, the three-tiered model that Mr. Clark talked about. So there are social costs. There are social costs of that hamburger. There's social cost of toxic waste. There's social cost of



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crime. These are all social costs that we hope to get our arms around. And that company could come in and say that's one of the ways we are...is a return on investment. So it's not simply a 5 percent of return on the company's investment, but it's also a return on investment because we're reducing taxpayer costs in this other category. So you can look at the three-tiered model in that way. [LB751]

SENATOR CARLSON: Could a casino adopt benefit corporation? [LB751]

MICHAEL WALLACE: I would hope...I don't know that. I don't think I should...I'm qualified to answer that. I would not like to...I don't think... [LB751]

SENATOR CARLSON: Okay. [LB751]

MICHAEL WALLACE: I understand the gist of your question and that's...that should not probably happen, but that's not my place. [LB751]

SENATOR CARLSON: Okay, thank you. [LB751]

MICHAEL WALLACE: Yes. [LB751]

SENATOR GLOOR: Other questions? Seeing none, thank you, Mr. Wallace. [LB751]

MICHAEL WALLACE: Thank you very much. [LB751]

SENATOR GLOOR: Next proponent? Good afternoon. [LB751]

EAN GARRETT: (Exhibit 4) Good afternoon, Senators. My name is Ean Garrett, you spell that E-a-n, Garrett, G-a-r-r-e-t-t. And I am a author, national speaker, inventor, and social entrepreneur. I am a native of northeast Omaha, a graduate of Howard University and Nebraska College of Law as well as the CBL International Law and Business School in Dubai. I am also the former spokesperson for MENTOR, the national mentoring partnership. And more specifically, I'm the president and founder of Infinite 8 Institute, L3C. And that L3C stands for low-profit limited liability company, also a social benefit corporation and incorporated in Michigan and operating out of Omaha. And from the numbers that I have researched, we are one of roughly 900-plus organizations around the country who are utilizing business as a tool to fuel social innovation. As an organization, we create and customize original human development curriculum, providing creative services and products for both for-profit and nonprofit organizations. In the past year, we have alone worked with organizations in ten different metropolitan areas around the country. We benchmark human development paradigms ranking no less than third in reading, science, and math in the world such as Singapore, Hong Kong, and China. And that's what it's all about, right? A world where we are increasingly falling behind. Automation, technological advances, and outsourcing of jobs are leaving

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America in decay. And so we all have similar problems because when China hordes natural resources, amasses a million man standing army, stockpiles nuclear weapons, and ingrains 36 ancient war strategies into the minds of each citizen from the cradle to the grave, it's all of our problems. When a five-year-old girl is shot and killed in the north Omaha ghetto, it just isn't a north Omaha problem. It's everybody's problem. And when there's an article written on the 27th of January calling Omaha the worst place in America to be black and then that article appears in the International Business Times, it isn't just an Omaha problem or a north Omaha problem, it's a Nebraska problem because people don't want to do business in that type of environment. So local elites in Omaha and the north Omaha area have failed. And the principalities in that area have also failed because things have not yet gotten better. And so you give the people access through this bill to the necessary resources to empower themselves and trust that human beings will find a way to be resilient. The nonprofit model is a welfare model. It is the vehicle for consumption and not production. It lacks the structural capacity to thrive and the time has come to open up these exclusive pots of state and philanthropic capital to innovation and creation because you need as many people as possible working on these social issues. And you level the playing field and then you let the best grant proposal win. And the reason why I say grant proposal is because what I have not heard yet be mentioned is the fact that these type of corporations would have access to funds. They would have access to foundational grants through PRIs or programmatic-related investments through the IRS. If you receive a letter from the IRS for a PRI, you are able, in order to be able to pursue these...this capital in these private foundations. So there is a financial incentive for organizations to be able to pursue that. It would help entrepreneurs and innovators in the community by opening up access to capital that otherwise might not be there through difficulties in obtaining capital and through the finance and through banks. So there are community-related incentives for this to go forward. If you have any questions. [LB751]

SENATOR GLOOR: Thank you, Mr. Garrett. Are there any questions? Senator Carlson. [LB751]

SENATOR CARLSON: Thank you, Senator Gloor. Something you just said toward the end, it really caught me here. Business is a tool to encourage social innovation and access to, I wrote this quickly, but it was access to funds. And it would sound like some of those funds could be government funds, some of them could be private enterprise funds. [LB751]

EAN GARRETT: That is correct. [LB751]

SENATOR CARLSON: So there is a financial incentive there. But we don't have any...nothing shows up in the fiscal note. And I don't know how familiar you are with the fiscal note that we see on these, but there's very little cost. So how does it not consider potential government dollars that would go into this? [LB751]

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EAN GARRETT: I've looked at the actual bill, myself, and that is a great question. Why doesn't it? You know, I think that, you know, down the road there could be additional, you know, statutes that would reinforce that. But there should be some type of financial incentive, I do believe, in order for corporations to be able to buy into this model. And I think that the program-related investment is that incentive. [LB751]

SENATOR CARLSON: Okay. Thank you. [LB751]

EAN GARRETT: Go ahead. [LB751]

SENATOR GLOOR: Yes, Senator Christensen. [LB751]

SENATOR CHRISTENSEN: Thank you, Chairman. So you're telling me that they maybe could use funds out of this benefit corporation to leverage funds out of a government organization? Or are they somehow going to get the government money into that benefit corporation? [LB751]

EAN GARRETT: That's not necessarily true. It would be up to the government individuals who would actually look at the proposals for the grants in order to decide. What it would do is, it would level the playing field as far as for-profit organizations and nonprofit organizations to be able to obtain either government or private philanthropic funds in order to do a social benefit. Right? So it's not necessarily saying that they would come out of the government, but at the same time, it would open up those funds for anyone that may be able to bring a benefit to society to be able to access and compete for those grants. [LB751]

SENATOR CHRISTENSEN: Okay. Thank you. [LB751]

SENATOR GLOOR: Senator Campbell. [LB751]

SENATOR CAMPBELL: Thank you, Senator Gloor. Mr. Garrett, are you aware of any other...in any other state where these corporations have been able to access private philanthropy grants? [LB751]

EAN GARRETT: Yes. Actually in New York, I know Mayor Bloomberg worked with a couple of organizations, some of the banks on Wall Street, in order to create social investment bonds. And those organizations have worked with individuals in Rikers, in their prison, in order to try to infiltrate them, you know, back into society. So there has been proof that this has worked. I've actually, through what you see in front of you, we've actually worked with some organizations in the city to create a unified curriculum that organizations all over the city, a lot of the at-risk organizations, well, at least the, you know, the clients that they serve, would be able to benefit from this. So essentially,

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we have people on board like the chamber of commerce, we have Lee Terry. Lee Terry has supported what it is that we're doing. We've talked to UNO, the chancellor there at the University of Nebraska. We have a lot of other organizations that are on board for this particular proposal. [LB751]

SENATOR CAMPBELL: Thank you. I think in the article that Mr. Wallace gave, and I just saw it real quickly, I think there is a mention and some additional information on social investment bonds. [LB751]

EAN GARRETT: Yep, yep. [LB751]

SENATOR CAMPBELL: So thank you for mentioning that. [LB751]

EAN GARRETT: No problem. [LB751]

SENATOR GLOOR: Other questions? Seeing none, thank you, Mr. Garrett. [LB751]

EAN GARRETT: All right, thank you. [LB751]

SENATOR GLOOR: Other proponents for this bill? Are there any opponents? Any would...anyone who would like to testify in a neutral capacity? Seeing none and Senator Conrad waived, we will close the hearing on LB751 and move to LB810. Senator Watermeier, welcome to the Banking, Commerce and Insurance Committee. [LB751]

SENATOR WATERMEIER: Thank you, Chairman Gloor and members of the Banking, Commerce and Insurance Committee. I am Senator Dan Watermeier, spelled W-a-t-e-r-m-e-i-e-r, representing District 1 in the southeast corner of the state. I'm here today to introduce LB810. LB810 would prohibit local ordinances or resolutions relating to real estate loans and mortgage servicing activities, leaving the regulation of these activities to state and federal laws. Examples of intrusive local ordinances which are being proposed or adopted by cities and counties across the country include proposed ordinances to exercise the power of eminent domain to acquire so-called underwater mortgages, to require lenders to register vacant and abandoned properties and pay annual fees to the city for such properties, and to require pre-foreclosure mediation. Bob Hallstrom, who will follow me, will go into further detail regarding his examples of different types of local ordinances. Under the dual banking system of the United States, the states or the federal government have the exclusive power to regulate banks. As such, municipal and local governments have been given no authority to examine or regulate bank activities. Any local ordinance adding a new level of bank regulation conflicts with federal and state laws. LB810 assures that real estate loan agreements will continue to be governed by state and federal laws only. The bill assures that local laws will not interfere with rights or obligations pursuant to real estate loan agreements made under state and federal law or subject those agreements to local fees or taxes. If

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real estate loans and the purchase, sale, and transfer of real estate are governed by a multitude of different local laws rather than state and federal law, substantial complexity will be imposed on the real estate market, which could adversely impact property values and cause losses for businesses such as serve homebuyers and homeowners. I do want to point out that while the legislation would prohibit local ordinances from interfering with the rights of lenders with respect to real estate loans and the servicing of these loans, regulation of these activities would still be subject to new state laws. Therefore, if municipalities felt that additional restrictions or regulations were necessary, they could approach the Legislature for assistance. Furthermore, such law would have had statewide applicability rather than multiple and different ordinances being adopted in various municipalities. I urge you to look favorably on LB810 and see the need for this legislation. If there are any questions, I could try to answer them. However, if you have technical questions, I believe the testifiers following me would be in a better position to answer your questions. Thank you, Senator. [LB810]

SENATOR GLOOR: Thank you, Senator. Senator Campbell. [LB810]

SENATOR WATERMEIER: Yes. [LB810]

SENATOR CAMPBELL: Thank you, Senator Gloor. Senator Watermeier, can you give us an example of a local ordinance that has been put into place that you feel has prompted the bill? [LB810]

SENATOR WATERMEIER: I'm going to let the testifiers behind me answer that. [LB810]

SENATOR CAMPBELL: Okay. [LB810]

SENATOR WATERMEIER: It's really a technical question like that so, I mean, I could probably mislead you and be much quicker. [LB810]

SENATOR CAMPBELL: You would? [LB810]

SENATOR WATERMEIER: I might unintentionally mislead you. [LB810]

SENATOR CAMPBELL: Thank you, Senator Watermeier. [LB810]

SENATOR GLOOR: Other questions? Seeing none, thank you, Senator Watermeier [LB810]

SENATOR WATERMEIER: All right. [LB810]

SENATOR GLOOR: Are you going to hang around to close? [LB810]

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SENATOR WATERMEIER: I am because I need to learn on this every step of the way too. [LB810]

ROBERT HALLSTROM: (Exhibit 1) Chairman Gloor, members of the Banking, Commerce and Insurance Committee, my name is Robert J. Hallstrom, H-a-l-l-s-t-r-o-m. And I appear before you today as registered lobbyist for the Nebraska Bankers Association in support of LB810. Senator Watermeier has given you the background regarding the need for the legislation and why we have come forward with this particular bill. I'll try to give you some concrete examples of things that have happened either in Nebraska or in other parts of the country that have led to this type of legislation being adopted in a few other states and now proposed here in Nebraska. Three primary areas in my written testimony that I'd like to touch on. The first one that Senator Watermeier referenced in terms of intrusive local ordinances has to do with eminent domain authority. We have seen a rash of ordinances proposed in counties and cities in the western part of the United States, particularly, where private companies have come in and encouraged the local governments to adopt eminent domain ordinances that would effectively allow them to purchase or acquire the underwater mortgages, the mortgages that have negative equity in them. The underpinning of the program is designed to allow the loan to be restructured at a lower principal value. The lender is paid a significantly discounted price for the loan under those circumstances. There are certainly constitutional issues as to whether or not that taking involves just compensation or fair compensation. But nonetheless, these types of ordinances are proposed and we think that that would have a dramatic adverse impact on the housing market, the sale of securitized mortgages in the secondary market. So that is an example where we have seen the potential intrusion into what state law would otherwise allow. The second issue that Senator Watermeier related to was the vacant and abandoned properties. Specific examples here, we've seen a number of communities across the country, in particular Chicago and Boston, who have proposed and adopted and then amended and done a whole lot of things. But the original example in Chicago, for example, was to require all vacant and abandoned properties to be registered with the city. There were fees ranging from \$500 to \$1,000 per property on an annualized basis with the fees increased if there were building code violations of any nature. And perhaps the most troubling aspect of it was that the normal rule of law is that when a lender simply has a lienhold interest or an equitable title interest in the property, they do not assume the obligations of the owner with respect to the maintenance and upkeep of the property. These ordinances in Chicago and Boston, however, would have imposed or do impose those types of obligations on the lender even before they take title through any type of foreclosure process or procedure. More recently in Missouri, where this type of legislation was adopted subsequent to the proposal by St. Louis County...the city of St. Louis and St. Louis County in Missouri, was a situation where the local ordinance would have required mandatory pre-foreclosure mediation. Our position with respect to this is that state law should preempt the field...should govern the field in terms of how lenders are allowed and authorized and required to foreclose or realize their interest in property

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when there is a default and that these types of local ordinances would cause delays and impediments to the normal foreclosure procedure with mortgages or through the acquisition of ownership or the sale of the property through the exercise of a power of sale under a trust deed. As I indicated, there's been a number of states that have either passed this type of legislation, Missouri and Wisconsin most recently...there are a number of other similar types of legislation on the books in many more states having to do with not allowing local ordinances to be more stringent than state law which is another way to potentially address this issue. But I think at the end of the day, the underlying policy justification is that we should have state and federal laws that govern the field in the areas of real estate loan enforcement and servicing rights associated therewith and not have to worry about going to every city or county or berg across the state of Nebraska to determine whether or not there's going to be a different flavor of the day for a particular regulation. I'd close by providing an example. Last year, Senator Mello had a bill on municipal land banks that you may recall. That particular bill was worked out through the legislative process. There were some provisions in there that might have been adverse to the banking industry that were worked out. We certainly wouldn't have wanted to face that municipal land bank bill in various and sundry cities or counties with any number of different permutations of how those regulations would have affected banks differently. And this just keeps things at the state level. As Senator Watermeier noted in his testimony at the outset here, that certainly nothing would prohibit a municipality if they saw a particular problem area that they thought needed to be addressed from coming to the state Legislature to put something together that, then, would have uniform applicability statewide as opposed to having it on a municipality by municipality basis. I'd be happy to address any questions that you may have. [LB810]

SENATOR GLOOR: Senator Campbell. [LB810]

SENATOR CAMPBELL: Thank you, Senator Gloor. Mr. Hallstrom, have you had a chance to sit down with NACO or the League and try to talk about, you know, how they might view this or how we could come up with something that would protect their interests as well as the interests you have? [LB810]

ROBERT HALLSTROM: Senator, we did make them aware because we assumed they would have an interest in this. One thing...I would back up. One thing I neglected in my written testimony, so I can at least give a Nebraska flavor to this, we are not completely without examples in Nebraska. There was a Lincoln city ordinance back in 2007 that would have, similarly to the Chicago and Boston examples maybe on a less grand scale, would have required neglected buildings as defined in the ordinance to be registered with the city, to have fees that were applied to them, to have owners--which would have included lenders--responsible for ownership rights and responsibilities and obligations with regard to building code ordinances and the like. So there have been some Nebraska examples. We did bring this...back to your question, we did bring this to the attention of the League of Municipalities. They indicated to us up-front that while

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they did not...I guess I don't necessarily need to speak for them, but they did not see anything on the horizon that they had. There's no specific ordinance or resolution that's in the hopper. But they, perhaps, weren't necessarily anxious to see the state Legislature prohibit them from doing certain things. [LB810]

SENATOR CAMPBELL: It's just been...the neglected homes in Lincoln have just been almost front-page news at times because of the request and demand of neighborhoods to the council and to the mayor saying, do something because this is lowering the property value of my home. [LB810]

BOB HALLSTROM: Uh-huh. [LB810]

SENATOR CAMPBELL: And a real concern about that. It would seem to me that the counties...we ran into this on the county board because of the responsibility that the board has in unincorporated areas within the county. So if it's not a village or a town, but it's...you know, I'm trying to think what's north of Lincoln that we dealt with all the time with homes that people just sort of, you know, abandoned or didn't take care of. So it might be worth our while to talk to them because my guess is, they'd like any help they could get. [LB810]

ROBERT HALLSTROM: Well, and I think, Senator, at least with respect...I'll go back to the municipal land bank. If you recall the debate on the floor, that was the very underpinning of that legislation... [LB810]

SENATOR CAMPBELL: Right. [LB810]

ROBERT HALLSTROM: ...was because of those same arguments about blighted neighborhoods and reduction of value. But at that time, the legislation only applies in Sarpy and Douglas County, whether or not at a future date there is something that could be done to address that. But that, again, is a state law. But everybody has the light of day to come to the Nebraska Legislature and address, as opposed to having to be on watch as to whether or not 5 or 10 or 20 municipalities are going to think it's a good idea to have a different approach to taxes, fees, delays, and enforcement rights and the like. So that's the general basis upon which we think this is warranted. [LB810]

SENATOR CAMPBELL: Yeah, the councils across the state would face, at some time or another, something like this. You're right. [LB810]

SENATOR GLOOR: Senator Carlson. [LB810]

SENATOR CARLSON: Thank you, Senator Gloor. If LB810 doesn't go anywhere...I understand how the Banking Association would want what this bill asks for. What advantage is that to the typical citizen in Nebraska or what's the disadvantage if it's not



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passed? I could see that banks are going to get tighter and tighter and have to be tighter with money and lending if we got additional requirements or those kinds of things to think about because it's an additional cost someplace along the line, eventual cost. [LB810]

ROBERT HALLSTROM: Senator, those would be the traditional notions that if you take it to its logical extreme if we face, as lenders, a significant number of various and different local regulations dealing with the same subject matter that lenders are going to have concerns about what do I have to do if I'm making loans in this particular county or this particular community that has passed a regulation? Am I going to have more cost with having to regulate or register my loans that involve vacant or abandoned properties? Am I going to have scenarios where if a mandatory mediation cropped up that I'm going to have an additional 120- or 60-day delay on top of what state law already requires for me to go in and realize on my interest in that loan where a default has unfortunately occurred and that's all factored, then, as you've suggested, into the cost of the loan in that particular jurisdiction, if you will? Lenders may choose to price their loans or their products differently if those types of regulations exist in a particular county or community. And so, yes, that would be the disadvantage is, we would see to the borrowers that if these types of regulations crop up and either put delays into the rights of enforcement or additional cost because you have to register every vacant property at the cost of \$500 or \$1,000 per year while you're pending the foreclosure of the property, those would all be additional elements that would be factored into the price. [LB810]

SENATOR CARLSON: So can we...is it fair to word this in such a way...the passage of LB810--that's the number--LB810 will, over time...well, maybe not...but will continue to make money more readily available to people that want to buy property? [LB810]

ROBERT HALLSTROM: Yes, because it would avoid additional cost... [LB810]

SENATOR CARLSON: Yeah. [LB810]

ROBERT HALLSTROM: ...that could be incurred or imposed because of the additional burdens. [LB810]

SENATOR CARLSON: Okay. Thank you. [LB810]

SENATOR CHRISTENSEN: Senator Schumacher. [LB810]

SENATOR SCHUMACHER: Thank you, Senator Christensen. Two questions, Mr. Hallstrom. First of all, when banks market these loans secured by mortgages to--or deeds of trust--to other institutions and put them on the market, does a lack of uniformity in state preemption, does that impact the value on the market or the complexity of that

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market? [LB810]

ROBERT HALLSTROM: I think, Senator, over time you would probably see that happening, that you would have a situation where if the investors in the secondary market were looking at a particular area in which loans were made where the ability to get in and realize on the enforcement powers of foreclosure or exercising the power of sale were inhibited, for example, that if all the loans that were made in Omaha or Lincoln or Columbus would involve an extra 120-day delay because some type of mandatory mediation was imposed by that particular community that, then, I would assume that the market would look at those, the investors would look at those and say that puts further delay into the process for us to realize on the enforcement of our rights if there is a default. So I would suspect that, yes, that could come into play in the decisionmaking and in purchasing or acquiring interest in a secondary mortgage market. [LB810]

SENATOR SCHUMACHER: Now under Dillon's Rule, a city does not have any power not delegated by the Legislature, where do the cities...what's the theory that they would have authority to do this to begin with? [LB810]

ROBERT HALLSTROM: That...I'd have to probably research and refresh my memory on Dillon's Rule before I could answer that. [LB810]

SENATOR SCHUMACHER: And then, finally, a third question. The bill refers to: no ordinance or resolution may add to change, interfere with, blah, blah, blah, any mortgage. And Senator Watermeier raised the issue that they may very well be underwater properties that are eyesores and problems. How does this interact, then, with an ordinance or a resolution on a blighted and substandard property where a city was trying to get TIF and condemn the property? Do we have an interaction or an unintended consequence between this language and TIF? [LB810]

ROBERT HALLSTROM: Senator, I'd have to look more into the TIF provisions. It's not...I'm not sure that I understand whether or not they can have an absolute taking of that property under the TIF. [LB810]

SENATOR SCHUMACHER: I know there's eminent provisions that come into play in development plans and things like that. But that does strike me as an area that we should have...know where we're at for sure because...that this doesn't have an interaction there. [LB810]

ROBERT HALLSTROM: It was not intended to do so. [LB810]

SENATOR GLOOR: Other questions? Thank you, Mr. Hallstrom. [LB810]

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ROBERT HALLSTROM: Thank you. [LB810]

SENATOR GLOOR: (Exhibit 2) Other proponents? Opponents? For the record, we have a letter in opposition from the city of Lincoln Mayor's office that is being passed out by the aides. Anyone here in a neutral capacity? Senator Watermeier. Senator Watermeier closes, and that ends the hearing on LB810. We'll move to LB1010. I passed Senator Janssen in the hallway, I think he's not far behind me. And for committee members, before Senator Christensen leaves, we will Exec tomorrow afternoon after tomorrow's hearing to tie up today's bills, tomorrow's bills, and we may bring forward a couple of more. So bring any notes that you have, but we will Exec after tomorrow's meeting. And with that, welcome, Senator Janssen, LB1010. [LB810]

SENATOR JANSSEN: (Exhibit 1) Thank you, Mr. Chairman. And I appreciate the brief meeting we just had here recently. My name is Charlie Janssen, C-h-a-r-l-i-e J-a-n-s-s-e-n, I represent District 15 which includes Winslow, Hooper, Nickerson, and more, and all of Dodge County. And I appear today in front of you to introduce LB1010. LB1010 would adopt the Nebraska Enterprise Fund Act and establish the Nebraska Enterprise Fund. This fund would be available for economic development activities, infrastructure development, community development, and job training programs. The fund would contain any amounts appropriated by the Legislature as well as any grants, gifts, and donations received. And I say that again. This is very much so legislatively...we have a lot of power over it as a Legislature. The Governor would be permitted to negotiate on behalf of the state to secure new funds to encourage small business development. This concept sometimes is referred to as a "deal closer" fund. If a new company, for example, has narrowed down its choice for a new location between Nebraska and one other state, the Enterprise Fund could be leveraged to ensure Nebraska won the competition or at least to make the business it's looking to come here, reconsider if they may have chosen a different state. This bill was inspired, in part, by a...well, what I call a constituent of mine although not in my district, that brought this idea to me and who will appear behind me to probably answer more of the technical questions that I'm almost certain Senator Schumacher has all the time. So I'll say that up-front on that. But it was from Texas, the Texas Enterprise Fund is where this came from. And I think it was also, although this is into my opening, and part of the Battelle study, this was also referenced. The results of the state's program have been impressive in Texas, even remarkable some say. And I've got an example. In fiscal year '67, the Texas fund was funded. It funded 15 projects. The total amount awarded from the fund was \$75 million which, again, would be appropriated by our Legislature so it wouldn't have to be that number. In fact, in the bill I did not put a number in there. It's up to us whatever we would put into it. But that action resulted into over, well close to, 13,000 jobs and committed \$6.76 billion in capital investment in the state of Texas. To give a specific example, although I'm not very familiar with this company, but we looked it up. It's called CH2M HILL and that's an engineering services company. They signed an agreement in...on January 2, 2012. The Texas Enterprise Fund awarded the project

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\$2.3 million. That resulted in a direct job commitment of 285 new jobs. Average wage of the jobs was \$85,000. The economic modeling regarding increased tax revenues estimated an increase in ad valorem taxes of \$1.5 million in sales and use tax receipts. Sales and use tax receipts were projected at \$8.3 million. I have provided one hard copy of the 2013 TEF, Texas Enterprise Fund Legislative Report to the committee clerk. If anyone is interested, it also can be found on line. I've included a number of accountability provisions and reporting requirements in LB1010 to ensure the integrity of the fund. The Governor must prepare a written statement at the beginning of the agreement process. Updates are required throughout. Recovery provisions are included if job targets and investment is not reached on a regular basis. The Governor must also provide an annual report to the Legislature at the beginning of each session that provides the results of the actions taken. And those reports will be readily accessible to the public, which is something that has come under a little bit of scrutiny when we talk about Nebraska Advantage Act of people not knowing where the money...taxpayer money is actually going to and what the benefit is. Section 4 establishes criteria for qualification for grantees. It also details the Governor's written agreement with the party. And that will include the minimum number of jobs created, date of creation of the jobs, penalties and recovery provisions if projections are not actually met in the bill or the agreement. Section 5 of the bill explains the Governor's required prepared statement detailing the economic impact of the agreements. And it includes, in order: one, the period covered by the grant; two, the estimated number of jobs created; three, median wage of jobs; four, additional tax receipts generated; five, the total number of other government incentives received by the grant recipient; and six, any other information the Governor cares or thinks is necessary. Section 6 requires the Governor to give priority to, in order: one, Nebraska small businesses that create jobs; two, small businesses from out of state; three, grants which create 100 or fewer additional jobs. "Small business" is defined as a company that is formed to make a profit; two, is independently owned and operated; three, has fewer than 100 employees. Section 7 grants permission to amend an agreement if the Governor and the grantee agree. Section 8 requires the grantee to submit an annual progress report. Section 9 spells out the legislative report the Governor is required to provide the Legislature at the beginning of each legislative session. The report will include, in order: one, the number of jobs each grant recipient committed to create in Nebraska; two, the number of jobs each grant recipient created in Nebraska; three, the median wage of the jobs each create in Nebraska; four, the amount of capital investment each grant recipient expended or allocated per project in Nebraska; five, the total amount of grants made to each grant recipient; six, the average amount of money granted in Nebraska for each job created in Nebraska by grant recipients; seven, the number of jobs created in Nebraska by grant recipients in each sector of the North American Industry Classification System (NAICS); and eight, the number of jobs each grant recipient created in Nebraska, the number of positions created, that provide health benefits for employees. Again, colleagues, to sum up, I think we need to do everything in Nebraska to first and foremost, invest in the businesses that are already invested in Nebraska. And also attract new businesses to

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come to Nebraska. I think LB1010 certainly gives us a tool. I'm not certain if it's the perfect answer by any means, but I thought this to be a prudent bill to bring forward this year. And there's a lot of moving parts in it and I think you can see that. It follows a basic economic development structure, however, that we have in place. And one that, like I had mentioned in my opening, that sometimes comes under a little bit of scrutiny because it's not as transparent as we would like to be. I have heard from some senators that they don't like the fact that we're giving the Governor a "slush fund" to work with. But in this case, it would be us making that decision. Were this bill to pass, we could appropriate zero to it if we didn't like what was going on across the street. Or we could appropriate more as we see things becoming necessary. And with the reporting process that we have in place, I think we could do that on a biennial basis or even out-year basis. So I think there's quite a bit of merit to this. And this is the first time I've ever appeared in front of the Banking Committee, although I officed next to the Banking Committee for the last now going onto six years. So, I'd be happy to work with the committee. I think this bill is worthy. I've got the, again I said, I've got what I would call an expert behind me on this. He may disagree with that. I also got the fiscal note which you have, which is \$77,000 in expenditures, basically over the next couple budgets for one additional employee for this. I have no basis to disagree with that fiscal note. [LB1010]

SENATOR GLOOR: Senator Janssen, so if I understand you correctly, every two years when we are setting our budget, the Legislature would decide on how much of that development money to allocate for the...to go into the Governor's pocket book as he's strolling around... [LB1010]

SENATOR JANSSEN: Yeah, it would come under the same protocol that all other agencies or departments would come under. And you know we, sometimes in our years we change things up a little bit per se. I know in Texas, for instance, it was maybe two years ago, California had a bunch of issues with overtaxation of businesses; they still have it. VISA had a company, not the entire company, but one of their subsidiaries was looking for a new place to move and they moved to Texas. I'm not certain if these funds were used, but I know we didn't compete for those jobs at that time. And I have a pretty good idea that it was heavily competed for. So I would think that these funds would have played a part in that. [LB1010]

SENATOR GLOOR: So does the Department of Economic Development, then, kind of lead the smaller...I mean, is there an offset to that expense in that we downsize the Department of Economic Development because they're going to work on the bigger projects versus the Governor being able to work on the smaller projects with their help? I'm trying to figure out how that relates to... [LB1010]

SENATOR JANSSEN: Oh, no. This could be a huge, huge firm. This could be just, like I said, this is kind of the end of the road. You know, the Department of Economic

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Development has worked on this. You could name your major corporation. We'll just use Google, for instance. And they've got everything laid out and they're in their decisionmaking process. In this case, the Governor could negotiate directly with Google and say, in Texas' case, they have \$75 million in this. And, hey, in addition to what we have done, the Legislature has appropriated to me \$5 million and that will train...you can use that for, as I laid out, job training or--and I didn't go back to it--but job training comes immediately to mind. So it could be used for both small or large. [LB1010]

SENATOR GLOOR: But we're encouraging small businesses and creating under...companies that create under 100 jobs, but not limited to that. [LB1010]

SENATOR JANSSEN: Right. And that reminds me, when I read Jack Welch's, (Straight) from the Gut, his book, from GE talked about how when he moved a big business, a GE subsidiary or GE itself to a certain city or a certain state, the number of small businesses that followed along with that. And I think sometimes we forget that. He talked about, I think in his book, bolt manufacturers. And a bolt business that is, you know, doing revenue of \$45 million a year and hiring, you know, mid-level wagewise employees. So I see this as a way to encourage both and sometimes one follows the other. [LB1010]

SENATOR GLOOR: Is anybody from the Governor's Office or the Department of Economic Development going to be here as proponents? I mean, have you had conversations with them? Are they taking a wait and see attitude on this or... [LB1010]

SENATOR JANSSEN: You know what? I have not had any conversation with the Governor's Office. Perhaps we could talk to Senator Carlson, if he's the Governor someday, about that and see if that works for him. But I haven't. I got one...that I'm aware of. Now I can't say they're not coming but I have not been made aware of any. [LB1010]

SENATOR GLOOR: But it doesn't look like they're going to be here in opposition or a neutral capacity, anyway. [LB1010]

SENATOR JANSSEN: Yeah. And I got no indication otherwise, which is typical for a Senator Janssen bill. I don't really beat the bushes to ask people to show up in support or against. But against seems to show up without much of my help. [LB1010]

SENATOR GLOOR: Okay. Other questions? Senator Schumacher. [LB1010]

SENATOR SCHUMACHER: Thank you, Senator Gloor. I was going to sleep through this but then I heard you mention my name and now I feel obligated, you know. [LB1010]

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SENATOR JANSSEN: I should have learned by now. [LB1010]

SENATOR SCHUMACHER: Senator Janssen, as I get it, the Legislature appropriates a bag of money, hands it to the Governor, and says, go do good with it, bring in some businesses, and make all kinds of reports to us and statistics. And the Governor can, then, pass out that money in deal closers. Why the Governor? Why not some independent, nonpolitical thing where none of this money gets cycled around or even might get cycled around as political payola. [LB1010]

SENATOR JANSSEN: To answer your question, why the Governor, because I pretty much followed what the Texas Fund did. And that's the...pretty much the end of that, is how I put it into the bill. But I'm open to this committee and trust this committee to make the right decision for a better way to do it. I talked to the Chairman of the Appropriations Committee about this particular bill. What I do like about it, even under the scenario of this particular legislation is that, say, we give, you know, pick your number. I'll just say \$5 million. And we don't like the way or the results of the report--we have the transparency there--we can say we're not going to put any more money into this fund. Or we, as a legislative body, can change the manner in which we do it. We own the statutes as a legislative body so we have a great deal of control over this. I'm not against what you're saying, Senator Schumacher. I mean, we can look at ways. My goal is probably the same as your goal is, to invest in companies in Nebraska to create more jobs and keep our children here and, hopefully, bring more people to the state of Nebraska...companies. [LB1010]

SENATOR SCHUMACHER: So as this goes through the sausage grinder, if the committee or by amendment upstairs were to concoct some other administrative mechanism, that wouldn't really violate your intent of some kind of a fund to be used as a deal closer? [LB1010]

SENATOR JANSSEN: Right. My intent is not to create a big government agency, if that's where we're at. And I think this...when I said I have no reason to disagree with the \$77,000 for, you know, a new person to administer this through the Governor's Office. You know, I'm...you may not be aware of this, but I'm not a big government guy. So, you know, I wouldn't want another complete agency. We've already got DED out there working on this. This is somebody separate that could do it, but if that's outside of the Governor's Office, I'm fine with that as long as the original intent of the bill, which is to create more jobs, invest in jobs in Nebraska, I'd be fine with it. [LB1010]

SENATOR SCHUMACHER: Thank you, Senator Janssen. [LB1010]

SENATOR JANSSEN: Thank you, Senator Schumacher. [LB1010]

SENATOR GLOOR: Other questions? We'll start with Senator Howard and then

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Senator Carlson. [LB1010]

SENATOR HOWARD: Thank you, Chairman Gloor and thank you, Senator Janssen, for your opening statement. I had three questions. How, in Texas, do they prove that the investment resulted in jobs? Did they use their taxes or how do they prove that it resulted in FTEs? [LB1010]

SENATOR JANSSEN: You know, I would have a pretty good idea that would come from the report that he or she is required to give to the Legislature annually. I'd imagine that, and I don't know this for certain, but I would have to imagine that there is an auditing process that they would go through much like we do. And that's the way I think they would handle that. [LB1010]

SENATOR HOWARD: And then you talk about grant applicants, but I don't see any guidance in terms of an application process. Is it more that the Governor would reach out to somebody and sort of entice them to come here with these funds and there wouldn't be a formal application process? [LB1010]

SENATOR JANSSEN: Generally, reading through particular bills I put forward, I usually leave the rules and regs up to the committee or the branch that would be handling this. So I'd imagine and I don't know for certain, but I would imagine that rules and regs would be handled through that manner. I imagine DED would probably have something to do with that. If I made application, say, for the Nebraska Advantage Act, I'd already probably done the application. And then at that point, I'm not certain that I put specific language in this that would make a new application for this, you know, kind of close-the-deal funds, as I called it. [LB1010]

SENATOR HOWARD: Oh, okay. So...because I don't see any wording about an application. [LB1010]

SENATOR JANSSEN: Hey, we can put it in. We can put anything in we want. [LB1010]

SENATOR HOWARD: And then on the bottom of page 2, on section (a) it says "The grant applicant, if organized as a legal entity". So is there a possibility that there could be a grant applicant that's just a person who's not organized as a legal entity but wants to bring a business here? [LB1010]

SENATOR JANSSEN: I would suppose if you were a business, you'd want to be established as a legal entity to begin with. So I don't know that that would really come up in any particular scenario unless you know of one that I'm not aware of. And, again, I took, you know, I took a lot of language from another bill. [LB1010]

SENATOR HOWARD: Uh-huh. [LB1010]



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SENATOR JANSSEN: And I'm not even certain the person behind me has the exact answer to that question. But I would think if you're going to apply for that, you're fairly established. [LB1010]

SENATOR HOWARD: Okay. Thank you. [LB1010]

SENATOR JANSSEN: Thank you, Senator Howard. [LB1010]

SENATOR GLOOR: Senator Carlson. [LB1010]

SENATOR CARLSON: Thank you, Senator Gloor. Senator Janssen, there's three, no, two interesting things about this approach. First of all, it gives priority to small businesses in the state to expand and create additional jobs. And secondly, small businesses from outside to relocate. I think I'm fairly close on this. When we take greater Omaha by itself and then take Lincoln by itself, that still only accounts for about 50 percent of the state's total population. So Waverly, Hickman, Denton, I'd call them rural. And if I'm close on that, why wouldn't we want to put in here that if that's close, 50 percent of these funds should go to rural Nebraska and 50 percent to urban? Would that... [LB1010]

SENATOR JANSSEN: I can't come up with a reason, right off the top of my head, why we wouldn't want to do that. And that's why I left it up to the committee to work with this. We've done that before with legislation that we've seen down here. We've parsed it out in certain ways. We've done it with a particular bill I had last year with service-disabled veteran-owned businesses. That's not uncommon in our statutes. And, again, I put this here as part of what Texas had put forward that's been very successful. I think we would be responsible and I know we always are. If we would take a greater look at how Texas has done this, not that you all are going to rush to an Executive Session to pass this out as soon as I leave today, so. I just think it's very, very worthy as an economic development tool and something that the Legislature would have a great opportunity to have a lot of control over even if we don't have the end result if we leave it as is or if we do what Senator Schumacher said. Still, we wouldn't have the end result which would take it out of the political position. I think there's a huge opportunity. And again, if we bring a big business, like I talked about General Electric...I don't think they're coming here but if we did it and they're in Omaha, you'll have a lot of those feeder businesses that will follow along with that. So certainly I'm not opposed to the idea and I know exactly where you're going. And I also consider those very...those rural areas. [LB1010]

SENATOR CARLSON: I lost my thought here so bear with me. [LB1010]

SENATOR JANSSEN: Take your time. Fine. [LB1010]

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SENATOR CARLSON: I'll come back to it. [LB1010]

SENATOR GLOOR: Questions? Senator Campbell. [LB1010]

SENATOR CAMPBELL: Senator Janssen, just looking at the report that you distributed, in Texas they're using--if I read this correctly--they're using the fund as...the fund is used only as a final incentive tool where a single Texas site is competing with another viable out-of-state option or if a Texas company is saying they're going to leave. But you see beyond that in your bill, right? I mean, you're using it more for an economic development rather than trying to make sure that they don't go to another state or bring them here. [LB1010]

SENATOR JANSSEN: I do...I like the first part because myself and many of you being business owners in Nebraska, I was always kind of rather turned off by the fact that our incentives always kind of looked outside the state to bring people in whereas we know it's much easier to keep a business in the state of Nebraska. So I do see...I see a lot of value in keeping the states here. And I don't even, you know, I'd...well, I'd almost want it to be administered if I was the final person, not so much as a threat that...you know, my particular business is medical staffing. It'd be very easy for me to, no pun intended to your business, uproot and move quickly. Whereas, in your particular business in landscaping... [LB1010]

SENATOR CAMPBELL: Be a little harder. [LB1010]

SENATOR JANSSEN: ...it would be a little harder to move. So, you know, I think those would be some realities that the person, whether it be the executive branch and somebody else, would have to make a decision on. I think the way that is worded, and you've read it much closer than I have...I hate to admit to that since this is my bill and I handed that out. But I think it might be worded correctly, that we should have, you know, the options on that. And the thing, again, I love about this is the transparency of it all and the fact that we set the money, we get a report, and we see what the jobs are created in the end. And if I was going to disagree with any part of this--not disagree but question--would be maybe giving the Governor or whoever is the end decisionmaker unilateral authority on making an amendment to the agreement. I would almost want that to fall back to the legislative branch if an agreement...say, if you said you were going to create 285 jobs in two years and you created 130. You know, I'd maybe even add the Legislature, the Governor, in this particular case, and get the grantee into that would be something that we could shore that up with. [LB1010]

SENATOR CAMPBELL: You also might want to think...and you maybe, you know, feel pretty strongly that you only want the Governor. In Texas, the governor, the lieutenant governor, and the speaker of the Texas house must unanimously--I thought that was interesting--must unanimously agree in favor of a project in order for an award to be

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granted. So they have incorporated in Texas, at least a representative from the legislative branch. I thought that was interesting. [LB1010]

SENATOR JANSSEN: Yeah. And I actually looked at that part as well. And it probably has more teeth in Texas under that than it does, perhaps, here with our Unicameral form of government. But I, you know, can't say it depends who's...it depends who's sitting in that office. And that's why I was a little bit late here today because it's been a while, but it's the first time I've been called to the Speaker's Office. So I got that distinction today before I came here. [LB1010]

SENATOR CAMPBELL: Thanks, Senator Janssen. [LB1010]

SENATOR GLOOR: Other questions? Senator Carlson. [LB1010]

SENATOR CARLSON: Yeah, thank you, Senator Gloor. The \$66,000 or \$76,000, \$77,000, whatever it is on the fiscal note would be for that FTE. And you're for limited government and so am I. So it looks to me like the first 10 to 15 jobs that would be created, the sales and income tax off that really goes to pay for that FTE. And of course, we wouldn't know if it stops there. But in looking at section 3, the section would provide that the fund may be used for economic development, infrastructure development--now infrastructure might be building a portion of a road or a driveway or something to enable a business to have a place to have better access to--community development, job training programs--I understand that, that makes sense--and business incentives. Now to me, economic development is probably recruiting. I don't know. What do you have in your mind when you say economic development? We have to spend some money on trying to get people's attention. [LB1010]

SENATOR JANSSEN: Right. [LB1010]

SENATOR CARLSON: That might be part of it. I don't know. [LB1010]

SENATOR JANSSEN: You know, yeah. And I agree with you, Senator, on that. In all the, you know, the terms, we can certainly batten down the terminology to get our desired effect, which is economic development, which is creating jobs. And I agree with you, offsetting the price of government, because you and I both know, and I know you say it quite often, how much each government employee costs for a private employee to offset. And so the goal would obviously be to have a positive impact. When I hire people at my own business, much like when you hire people, if you want to hire somebody, you know what you're going to pay them. But the idea is that you're going to make a profit off of that person's labor and experience. So that would be the same goal for this bill. And I think we could all work together. And I'm very, very serious about this bill. As I've said, I think this bill has a lot of merit. I think it's a small way to do something. I'm not even against a sunset provision on this and look at it over so many years. I've never

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been opposed to sunsets, whatever number of years we would look at; a four-year sunset, something like that, to see if it works. We're...none of us are going to...well, Senator Garrett...and well, and a few of us will be here more than four years. So, you know, and they can say, well, we sat at this hearing, we talked about it, we worked on this bill, we started this fund. We liked the way that, you know, Governor so-and-so applied it. We had, you know, 3M expanded. They created more jobs outside in the Valley area, Valley, Nebraska. You know, we've got something down in Tecumseh now. This is...it worked or it didn't work. And I think it's really a responsible piece of legislation. [LB1010]

SENATOR CARLSON: Okay. And one other question. And I'm not taking issue with any of these things, economic development, infrastructure, business incentives. What's an example, in your mind, of a business incentive? [LB1010]

SENATOR JANSSEN: You know, I thought you were going to ask me that when you said that. And I didn't have a really a good response to that. So I think I'd probably have to get back to you on that or maybe the gentleman behind me, Giovanni, can answer that question for you. You know, I could think of several incentives to business. What I'm not thinking of is a golf membership at the local country club or something like that. So that would maybe be an opportunity for us to...or a direct payment to an owner of a company or whatnot. So that would not be the intention that I have in this particular legislation. [LB1010]

SENATOR CARLSON: Good. Thank you. [LB1010]

SENATOR GLOOR: Seeing no further questions, thank you, Senator Janssen. [LB1010]

SENATOR JANSSEN: Thank you, Chairman Gloor. [LB1010]

SENATOR GLOOR: Move to proponents of the bill. Afternoon. [LB1010]

GIOVANNI INFANTE-STILL: Good afternoon, Senator Gloor. My name is Giovanni Infante-Still, G-i-o-v-a-n-n-i I-n-f-a-n-t-e-S-t-i-l-l. I'm a proponent of LB1010. And with a long name like that, I was a kindergarten spelling bee champion. One of the things where I approached Charlie in regards to LB1010 is, I've actually been on the receiving end of a Texas Enterprise Fund. If you look at the 2008 report, a company that I had worked for received \$1 million for a \$31 million capital investment into the state of Texas. One of the things that I believe in LB1010 is, it gives Nebraska a real point of differentiation that is not backside tax incentivized. When you're on a company or you're a private equity firm or an investment banking firm, you're looking to help guide your companies that you're working with where to invest their capital. I've been on the questions and the receiving end of a board saying, where am I going to get my greatest

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return on invested capital? So the point of differentiation is the Texas Enterprise Fund or, in this case, the Nebraska Enterprise Fund would really give us a point of differentiation when the funding is needed. And that is at the point of when the deal is closing. What is very important also in a company making a decision on where to invest in some of the cases tens of millions or hundreds of millions of dollars into a capital investment project is not only the balance sheet return, which tax incentives help, but also in the time of closing, which is cash out of pocket. That can be a real difference maker in determining where you're going to because as you go through a process of looking for site allocation, it will come down to very close determination. In this case, it was either Texas or a state nearby. I was making notes of several of the questions that were asked. I would...probably could add color to that or ask any additional questions. But with that, I'll open it up for questions. [LB1010]

SENATOR GLOOR: Thank you. Senator Campbell. [LB1010]

SENATOR CAMPBELL: But just real quickly, I thought it was interesting, and this is just a cursory look on my part, but they gave money to two homegrown Nebraska companies. [LB1010]

GIOVANNI INFANTE-STILL: Yes. That was one of my footnotes here, is that Nebraska is only a handful of states that has received two awards. One was from...the biggest, the most known, was TD Ameritrade, which they received I think it was around \$2.1 million, \$2.3 million for an investment project that created 490 jobs in the state of Texas. Cabela's, it could be as simple as a investment for a warehousing project. And one of the things, though, that's important from being involved inside of corporations where you're looking and where those decisions are important is, take for example, the...we have a great rail yard in western Nebraska in Sidney. It's one of the two areas where you have a switching station that goes north and south and it has a direct line to the port of Houston. Now if you're inside a company, that may be an allocation. But do you really want to spend all of your capital in terms of building a warehouse or building a...that warehouse may not be perfect to the rail switch so building a rail extension at \$200 a foot, that might be a decisionmaker of saying I could go to a pre-ready site. And these are...those are the types of things that this fund could help close because that is an expensive proposition when you're taking through all aspects of reallocating or investing significant capital in a state. [LB1010]

SENATOR GLOOR: Senator Schumacher. [LB1010]

SENATOR SCHUMACHER: Thank you, Senator Gloor. Thank you for your testimony. What's the nature of your business? [LB1010]

GIOVANNI INFANTE-STILL: The nature of the business was consumer packaged goods. The plant that we had put into Texas was a baby diaper manufacturing plant.

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[LB1010]

SENATOR SCHUMACHER: Thank you. [LB1010]

SENATOR GLOOR: Other questions? Seeing none, thank you Mr. Infante-Still. We appreciate it. [LB1010]

GIOVANNI INFANTE-STILL: You're welcome. [LB1010]

SENATOR GLOOR: Especially if you've traveled a long way up here. We appreciate it. [LB1010]

GIOVANNI INFANTE-STILL: You're welcome. [LB1010]

SENATOR GLOOR: Other proponents? Any opponents to this bill? Anyone in a neutral capacity? Senator Janssen, you're welcome to close. [LB1010]

SENATOR JANSSEN: Yes, and I'll be quick. I would like to thank Giovanni for being here today. I hope that added some clarity. I think this is really worthy, which is what I talked about. He is a...Mr. Still is actually a resident of Blair so he didn't travel too far, but he travels quite often. And it should come of no surprise to anybody on this committee that I met him because he owns a baby diaper company and I have several of them. So thank you very much. [LB1010]

SENATOR GLOOR: Thank you, Senator Janssen. [LB1010]

SENATOR GLOOR: And with that... [LB1010]

SENATOR JANSSEN: I'm more than happy to work with the committee in any possible way on this legislation. [LB1010]

SENATOR GLOOR: Okay. That closes the hearing on LB1010. And that will end the hearing today. We will Exec tomorrow. [LB1010]